

BASICS OF LEGAL DRAFTING

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Basics of Legal Drafting

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Preface

Before saying anything about this book, the author would like to admit that this book is not comprehensive covering all formats of legal drafting and conveyancing. It does neither cover the theoretical aspects nor the all types of legal drafting. This book only covers the most common types of petitions, applications or legal documents used in our regular practice. It mainly targets the students and the newly enrolled advocates who want to learn some basics about drafting. It can be of assistance for the students, pupils and newly enrolled advocates to learn few elementary things about legal drafting in according to the popular formats used in the Court. Few references as to procedural laws have been made on this book for their further studies. It will help the inquisitive minds, at least, to get some clues for extensive study. Till then, it will help the students and advocates to start the study for developing their drafting skills. Capability of good drafting does not only depend on the skill and experience it also require knowledge which come with time through hard work, sincere study, honest devotion and professional integrity. It needs patience and accountability to this profession. On this context, this book may act as an initial motivation. Good drafting is a very important legal skill. Even good drafting can save a bad case sometimes without exhaustive or full-length hearing of a case. It always helps the Judges as well as the hearing lawyers to understand the merit of the case properly and secure relief for the parties. There is a common say that a good case may face bad fate in the hand of a bad lawyer but a bad case may face good result in the hand of a good lawyer. This is how a competent lawyer having sound knowledge, dedication and professional integrity is important in a case. Of course, good drafting skill is an ornament of a lawyer. All these things are the motivations behind this book. Though it does not claim its comprehensiveness, it takes its comfort zone claiming that all the facts, formats, events and submissions presented in this book are true and correct except the names and case numbers which have been altered intentionally for maintaining the privacy of the parties. Therefore, when the readers will read the samples, they may feel totally into it – into the real facts, real cases. From this perspective, this book will be helpful for the readers. Wish good luck to all. For any recommendation or comment please email to lima_law02@yahoo.com

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CHAPTER 1

Some Basic Preparations for Drafting

Importance of a good draft and humbleness

Petition we place before the Court is the primary bridge between us and the Court. Petition presents the case of the litigant. Thus, it creates a bridge between the Court and the litigant though the litigant is neither personally known to the Court nor appearing before it in most of the cases. Petition speaks the plea of litigant. And as lawyers, we build that bridge. We are the creators of that sacred bridge. The lawyers are the planners, designers and builders of that solemn connection between the litigants and the Court. And, the first stage of that process is the 'draft' i.e. drafting the petition.

Mr. Janak Dawrkadas, Senior Advocate, Supreme Court of India in his speech on 7th September 2018 mentioned that the art of advocacy begins from our drafting the petition. Drafting is one of the most important parts of advocacy. Advocacy goes beyond lawyering. Sometimes, advocacy starts where lawyering ends. It starts essentially from the very basic i.e. drafting the pleadings and petitions for the Court. Our drafting reflects our thoughts, expertise and skills. Drafting is the foundation of the entire case. If the foundation is not strong, the super structure of the case may fall down. It may not able to sell your ideas as an Advocate. Drafting is the way-out, because when you sit for drafting, you need to go through the entire facts and circumstances of the case, therefore you don't need to take any extra preparation for the case further.

When you draft the petition with proper attention, care and due diligence, it naturally keeps your confidence high for standing before the Court with a good draft. You know that you have addressed all the necessary factual aspects and legal points as necessary to be mentioned in the petition. Your drafting will bear your mark, will introduce your sincerity to the Court and will show your dedication. It is especially required for the junior lawyers. Generally junior lawyers do not get chance to appear before the Court during their initial days, but their drafted petitions can. Their drafted petition can speak for themselves showing their qualifications to the Court. In several occasions, I have seen the Court asking the name of the person who drafted the petition. The Judges may want to know about the draftsmen, mainly in two situations, one – when the petition has been drafted so well that it convinces the judge with fact based authenticity and argumentative legal submissions, and other – when the petition has been drafted so bad that it irritates the judge with copy, paste, major errors, silly mistakes, bogus write-up, etc.

It is very important to maintain fact based authenticity in your petition. It refers to the requirement of utmost important which is to avoid copying and pasting, finishing drafting

abruptly, not going to the root fact of each case and generalize all facts without maintaining the particular authenticity. This is a bad tendency. It is doing injustice to each fact, to each client and to this profession also. Clients come to you for service. They pay you, whatever more or less, if you agree to that case at whatever consideration or without any consideration, you must do justice to it; otherwise let the case go. It may find some better alternatives rather than being defrauded by your non-service, lack of care / due diligence / sincerity / honesty and laziness. Law is already there. You may not know all laws. It is not possible either. You may not find all the strong arguments. Because, in a Court of law, you never know what points may arise or what interpretation will require or what may persuade the Court or what attack you may have to face from the opposite side. Therefore, as a lawyer you are required to apply your all abilities to keep the fact authentic and true before the Court so that at least from the fact you are not alleged to mislead the Court or for suppression of act or not coming with clean hands.

Your consistent good drafted petitions will prove your consistent and effortless dedication towards this profession. It will automatically secure a place for you in the mind and heart of Judges. They will value you. They will also excuse you if any errors occur in any petition. Your consistent performances will lead them believing that your mistakes were accidental. Mostly, when they will see your name in the petition, they will value it thinking that you have not come up with any bad case or vexatious claim or false statements. Sometimes, you may miss your item by attending the case in time when it was called for, but your consistent sincere performances may make Court believing that it was *bonafide* on your part and Court may not dismiss the case for your non-appearance. I am not saying that only good petition can earn you all these benefits. But it can be one of good reason, and I have experienced it.

Generally, most of us take drafting lightly. We prefer verbal submissions more to draft. The most benefit we can get at the time of final hearing and judgment. It may save you. While taking up the case for final hearing or pronouncement of judgment, generally judges examine the petition. If the petition is good, it prepares the mind of the Judge in your absent while s/he is working on the case-file at her/his room. It may catch and prepare her/his mind while he/she analyzing the case alone. Most of the Judges go through the file while the same reaches final stage of hearing. They examine the file minutely while passing the judgment. Your good draft may change the fate of the case.

Another important thing must be mentioned that while hearing a case finally, the lawyer may submit written submission or a summary of submission or a supplementary writing down all the submissions or a synopsis of the case with all relevant case laws. Mind often betrays us but the written form never does. When you submit your arguments in written form, it helps the Court to go through and understand while they are reading the case in your absence. It also expresses your sincerity. It also shows your respect, hard work and dedication.

Along with a good draft, a lawyer must be humble. There is no alternative to humbleness. Humbleness does not mean flattering or oiling. It does not include unnecessary compromise setting aside right principles, ethics and moral value.

With knowledge, one should not feel grumpy or arrogance. It will destroy everything. One should not feel superior to the Court. An advocate should not consider himself/herself knowing more than the Court. If any lawyer thinks that s/he knows more than the Court (the presiding judge(s)), s/he will be wrong. It will bring him/her arrogance and over confidence. It will restrain

him from building a relationship of respect and reliance with Court. It will prevent him/her from being submissive before the Court. It will prevent him/her from learning and improving more.

As a lawyer, you are not there to fight (quarrel) with Court, rather you are there to secure relief for your client in accordance with law by your own skill, which surely needs submissiveness with firmness, knowledge with politeness, argument having substantive merit both on point of law and fact, pursuance with honesty and positive energy with humbleness. It will enhance your acceptance which will build your reasonable inner confidences too.

An advocate must remember that in a day s/he needs to do different kinds of works, but the Court sitting over there doing same kinds of cases days after days with different varieties. The Court needs to hear more than an Advocate. By this way the Court grows more experience, knowledge and skill than us. Moreso, an advocate can be biased and possessive regarding his/her cases because it is his/her duty to put thyself into the shoes of the clients. But the Court is neutral. The Court has no any nexus with the client or any personal obligation but the lawyer has. That's why the Court can see and adjudicate more fairly than lawyers.

Therefore, it's wrong if any lawyer thinks himself/herself more knowledgeable than the Court. His/her academic excellence can be higher. But so far while presenting any case before any Court, a lawyer shouldn't think in that way. It can be self destructive. It can prevent you from growing more skills, working more hard and learning / studying more. The Court may ask different kinds of questions you may not like or may think unreasonable or of no importance. Still those questions are reasonable, important and meaningful to the Court, and most importantly for bringing relief for your clients from that Court. But your ego and over confidence about knowing and understanding more than Court and thinking more expert/prudent than Court may not bring any result. You can take it personally. But because of your ego and non-submissive attitude will cost your clients, which is indeed a bad lawyering and breach of duty. This is really dangerous. Quitting that self ego for the clients can bring your more peace and respect. It may give you self satisfaction that you have done your best, even nullified your self-ness and you were totally representing your clients being the clients themselves before the Court of law. You were in true sense in the shoes of your clients.

On this occasion, I would like to share some experiences from my learned Senior. Sometimes we share with our Senior that he is always very humble before the courts, never argue, always agree with the courts without pushing any reversal or pressing tendency, never using tough or pricking words or never try to force by words, or put pressure upon court, etc. Our Senior says, listen—

- Be always humble with Court even if you are not wrong always, but never say Court was wrong,
- Court may seem wrong to you, but it does not mean you will do anything that goes against gentle practice. You must comply with whatever court says and suggest your client accordingly. You must stay under legal process. If you feel that the Court is wrong, then stay strong but don't lose humbleness anyway. Stay firm and take order. You may have higher forum or other alternatives. But don't take it personally. Don't show personal attitude. Don't make your personal enmity. Don't show your ego. Be humble and be submissive. Be cool and be polite,

- Never use any words (hard/tough/pricking/personally attacking/mimicking/negative/ likewise) with the court or with the learned advocates or clients of others side,
- You must not twist facts and confuse the courts,
- You must disclose facts as it as before the courts,
- In criminal case, you must disclose the specific allegations against your client first and lead the court directly there, and thereafter the defence case or arguments in your favour,
- In every situation, at any condition (no matter how terrible or adverse the situation), you must not let your tone suppress your humbleness to the court and to the rule of law,
- You must be always polite and humble to the court and you must be careful with the words you select for using before the court,
- Your body language should be respectful towards Judges, clients and others,
- You must not lose faith,
- Your high tone may bring you some good results but in the long run it will destroy you. If you want to be sustainable, you should be humble by heart, not to show-off. You must be humble maintaining your own values and principles. Your arrogance will bring you nothing except destruction and detachment from people.

Some Basic Preparations for Drafting

Legal drafting is a very important to learn and practice. Drafting is a skill and art of presenting the case/subject matter of the client by a lawyer. It is used for legal purpose either for presenting before the Court or for any other legal function. Generally, lawyers have no standing apart from their clients in dealing with the issues/cases of their clients. Lawyers do lie into the shoes of their clients. Therefore, while drafting any petition, agreement, opinion, notice or any document a lawyer must give priority of the desire and particular facts of each case; however it is always necessary to give a legal shape to the drafting in accordance with law and the procedure prescribed thereby. Lawyers are free to state anything in the petition as per the desire of the client but the same cannot go beyond the law and its prescribed formats.

A good drafting is always precise, to the point, focusing on the main issues and clear to understand. Language should be legal but simple and common. Unnecessary use of complex sentences and tough words should be avoided. A drafting should be in the simplest format to achieve and serve the purpose. Drafting skill generally grows and develops with time. Nevertheless, in most of the cases the formats of the petitions used in the Court are already prescribed. In case of registered deeds, formats are already provided. In addition, there are several popular formats developed over the years through practice and usage. The skill doesn't lie with the format which can't be changed radically, or someone is not going to be rewarded for the format. Common format is better to follow. It is less important. The most important part is to fit and present your case in an easy and common format of the Court in such a way which serves the purpose of the client, which presents the case in most easy way with basic law points, which can pursue the Court to grant relief and which doesn't irritate the Court with complexities and confusions.

In a petition, unnecessary repetition of facts and statements should be avoided. There should be chronological order while narrating the facts. It should not sound like a fairytale or made up story. It should be reproduction of true facts which may help clients to have same standing

throughout the different stages of the case without any shifting or confusion by their own facts. Statement of true facts is the best policy. Facts shouldn't be twisted. We must remember that facts can't be created. It must happen. Because, there will be always other party who will contest the case and bring the lie before the Court. Therefore, it is always better not to leave any weak point in drafting, especially in black and white i.e. in the petition. A good case may face bad fate due to this kind of mistake or negligence.

It is the competence of a lawyer to select right and correct words and sentences in a petition expressing the right sense of the client's case. Sometimes, unnecessary admission of facts may impair the case. Likewise, unnecessary hide of defaults or weak points may destroy the merit of a good case. It mostly depends on the experience and skill of a lawyer. A good draftsman may not be a good hearing lawyer, and a good hearing lawyer may not be a good draftsman, but a good hearing lawyer always has have the proper understanding of a good draft.

A lawyer should have clear knowledge about the relevant laws, current practice, judicial development and a good command over the law points. When dealing with a particular issue, a lawyer should have clear and proper knowledge about the relevant provisions of laws. If the matter is covered by any particular law, then before taking any recourse under that law a lawyer should at least read/go through the entire statute (Act/Rules/Regulations). It will help developing the skill of interpretation and understand the whole act, its purpose and application. It will help giving a comparatively comprehensive service to the clients. It will also save the lawyer from being ashamed of later on occasion if the suit meets rejection or dismissal due to his/her procedural mistake or debarring provision under any law. One should not be over confident about any law or any judgment. It is always better to read the whole statute or judgment before taking legal recourse.

Before you start solving the problem of your client, as a lawyer you must keep few things into your mind. These things generally come from experience and develop your skill automatically. You don't need to pay any extra effort to learn these things. But sometimes when our mind slips remembering these points, it may lead to error solution and you may lose the case and client as well. For that reason, we must remember these points before proceeding with any solution. These points are not comprehensive. Nevertheless, some basic points are listed below with examples—

1. About Parties

A lawyer can receive case from anyone, but taking any legal step it is the duty of the lawyer to initiate the legal process by the appropriate person who is having the locus standi or legal character to do so. For example : Arif's father has executed a tenancy agreement with Zamil who is not repaying the rent for last one year despite repeated of reminders given to him. Now, Arif's father wants to evict Zamil through legal process. Arif's father is the owner of that property under tenancy agreement. Arif has come to you for taking legal action against Zamil. Yes, you can hear the stories from Arif and receive all necessary papers, but before serving legal notice or filing case you must take power/Vokatnama from Arif's father, and you have to serve legal notice or file suit/case on behalf of Arif's father. Arif's father is the proper person here for imitating legal process because he is the landlord who executed the tenancy agreement. It is the basic requirement for taking any legal action. It is not the duty of the client to know this legal

technicality. It is the duty of the lawyer to cure these technicalities and start legal proceeding by the appropriate person; otherwise the case/suit will meet with bad fate. The suit will be rejected or dismissed outright only for the lack of locus standi.

Parties are of two kinds – natural (can be termed as individual) and juristic (can be termed as artificial person). Locus standi or legal character differs in case of both. Let's have a short discussion on this—

(i) In case of Natural Person/ Individual

In case of individual, it is better to follow straightforward rule i.e. to initiate legal proceeding by the person who has suffered the loss. The person directly involved and victim of the event may file suit. In reference to the earlier example Arif's father is the proper person to take legal action against his tenant. If Arif's father was dead by then and the tenant was not paying rent for more than six months, and Arif as one of the heirs wants to take legal action, then the situation will be different. The lawyer has to ask how many heirs have been left by his father; if there are more than one heirs then is there any registered/unregistered partition amongst the heirs apportioning the properties of Arif's father to know that who owns the property as mentioned in the tenancy agreement; if there is partition then it is easy to determine that who now owns the property; if no partition agreement or amicable settlement then all heirs should make party, otherwise tenant will take the opportunity that he could not understand to whom he should pay the rent.

It is just one example. It may happen in all other cases. For example : If Mr. George is evicted illegally from his land, he has to file the suit for declaration of title or recovery of possession; if George's land is incorrectly recorded in BS khatian in the name of another person, then it should be George who is to file the case or on his death by his heirs/successors/legal representatives or any of his attorney; if George is an employee and he is illegally terminated/dismissed from his service, he can file suit for reinstatement to his service.

Order I Rule 1 of the Code of Civil Procedure, 1908 provides who may be joined as plaintiffs.¹ The locus standi can be drawn from the language of Section 42 of the Specific Relief Act, 1877. It provides as follows—

“Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

These contentions— “entitled to legal character” or “any right to any property” construe the basis of locus standi. A suit for declaration is maintainable under Section 42 as to any legal character or to any right as to any property of the plaintiff if the defendant denies or is interested

1. All persons may be joined in one suit as plaintiffs where—

- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and
- (b) if such persons brought separate suits, any common question of law or fact would arise.

to deny his or her title to such character or right. If the above conditions are satisfied, the plaintiff does not need to ask for any further relief than a mere declaration.²

The concept of 'legal character' in Section 42 is wide enough to include the status of a person. In order to entitle the plaintiff to bring a suit under Section 42, it is not necessary that the defendant should actually deny the plaintiff's legal character. If the claim which might be set up by the defendant is a hindrance to the plaintiff in the exercise of his or her rights or would expose him or her to liability if he or she disregarded, it he or she might come to Court for a declaration that the claim so set up by the defendant was not well founded.³ Thus, 'legal character' denotes a personal and special right not arising out of contract or tort, but of legal recognition. For example, rejection of plaintiff's application for allotment may create legal recognition enforceable against a person whose similar application is accepted.⁴

'Legal character' is nicely explained in the case of *Burmah Eastern Ltd. vs. Burmah Eastern Employees' Union*⁵, wherein, legal character is used as synonymous with the expression 'status'. However, this 'status' or 'character' should be conferred by law. It was held that the expression 'legal character' or 'status' denotes a character or status conferred by law on an individual or a number of individuals, viewed as a unit of society and not shared by the generality of the community but only by individuals, placed in the same category of character. The character itself must be conferred by law on persons viewed from the standpoint of membership of the community.⁶

Therefore, the character i.e. the status of the plaintiff must have legality for seeking relief. The relationship between the 'legality' and the 'character of the plaintiff' along with 'the relief claimed thereon' must have direct nexus and close connection. It depends on the plaintiff, the subject matter and the relief sought for. Therefore, it is ultimately each fact and situation that determines the legal status or legal character of the parties. In addition, it's not the parties only who determine their characters. Parties express their position and status with their facts. It's the Court who is to decide the 'status' or 'character'. It leaves the power of the Court discretionary and wide. But it does not permit an unrestricted right of instituting all kinds of declaratory suits at the will and pleasure of parties. The right is strictly limited. This is patent. The plaintiff cannot allege any infringement of a right to property.⁷ This discretionary power is to be exercised cautiously and not going beyond the setting norms and principles developed through judicial pronouncement throughout the years. A discussion on this point is delineated afterwards.

Apart from legal character, the person having right to any property also entitles a person to file suit for declaration under Section 42. Right to any property means and includes any right to any kind of property. Since under the Act, there is no definition of 'right' or 'property' or 'right to property', therefore right may include any kind of rights which gives the claimant a proper standing for praying declaratory relief. Property may include immovable and moveable of any

2. *Divisional Forest Officer, Dhaka vs. Md. Shahabuddin and others* [2008] 5 ADC 91.

3. *Noor Jehan Begum vs. Eugene Tiscenko* [1942] AIR Cal 325.

4. *Mirpur Mazar Co-operative Market Society Ltd vs. Secretary, Ministry of Works, Government of Bangladesh and ors* [2000] 52 DLR 263.

5. [1967] PLD Dac 190.

6. *Ibid.*

7. *Ibid.*

kind. Definitions of ‘immoveable property’ and ‘moveable property’ are provided under the Transfer of Property Act, 1882, the General Clauses Act, 1897, the Registration Act, 1908 and others. An absolute owner of a property if gets dispossessed and his title gets clouded, then the owner can file declaration suit for decreeing title in his or her favor for making the same free from all clouds and disputes. A leaseholder can file suit if he is dispossessed illegally. Anyone having right to any property can file title suit.

This right may be present or future, but not too remote. A remote possibility of acquiring title in any property (which is not certain yet) cannot create any standing for seeking declaratory relief. The right must be existing interest and entitlement at the very time of seeking relief. A mere contingent right which may never develop into an actual right is not enough for a suit for declaration of title. The main contention is that unless the claimant has the right to title, he or she cannot pray for declaration of title. For getting and proving something in his or her favor he or she must have had it, perhaps for once, perhaps recently has been deprived of his right, but in all cases he or she must have right and he or she has to prove it, because in the civil suit the party seeking relief must prove his case. The Court applying its discretion determines the right of the claimant with regard to the relief prayed before it. In exercise of this sound discretion, the Court should make a declaration as to the right which exists though exercise of it may be contingent on something in future.⁸ The Court has always the discretionary power to reach at the decision regarding right (present or near future) of the parties in the subject matter of the suit. Even legitimacy of a child born or in womb can be determined through declaration suit.⁹ However, the spirit is that the right over the declaratory prayer along with the very subject matter of the suit must exist and the nexus is not too remote in any way. Be that as it may, although Section 42 is not exhaustive and declarations independent of that provision is even permissible but a suit for declaration, however, would not lie when the plaintiff is neither entitled to any legal character or status nor clothed with any right.¹⁰

Along with said Section 42, Order I Rule 1 the basis of locus standi can also be drawn from Article 102 of the Constitution of the People’s Republic of Bangladesh. The very words “aggrieved” and “any person” as mentioned therein also form the basis of locus standi in invoking jurisdiction under Article 102 of the Constitution. In the Chapter relating to writ petition, it will be discussed in a nutshell.

(i) In case of Juristic Person

Juristic person may include company, body, organization, statutory authority, institution or any other incorporated entity. Besides, two other business entities are legally recognized, which are— proprietary firm and partnership firm.

Proprietary Firm

Proprietary firm is a business concern owned by one person. It is known as sole ownership firm. Its owner bears its entire liability. It’s all decisions, rights and liabilities are borne by the owner solely. Generally, any Bangladeshi competent in the eye of law (capable of executing a

8. *Bombay Burma Trading Corp. vs. Smith* [2000] ILR 17 Bom 197.

9. *Mankuwar Asaram vs. Mt. Bodhi Mukundi and others* [1957] AIR MP 211.

10. *Shafi A. Choudhury vs. Pubali Bank Ltd. and others* [2002] 22 BLD 423.

contract) can open and run a sole ownership firm by obtaining trade license from the concerned office i.e. City Corporation, Union Parishad, etc. Trade license is the permission to trade as business entity in a specific name with seal, signature and bank account of its name. It ceases to exist when the owner dies. Whether proprietary firm should be recognized as juristic person is a controversial one. It is not recognized as a legal entity but it can operate as a business entity. Though proprietary firm is said to have no separate or distinct personality than its owner; however there is some distinctions.

For example : Mr. Shipon runs a restaurant in the name Messers Shipon Enterprise obtaining trade license from Chittagong City Corporation bearing license No. 55678 dated 27.05.2005. After 15 years business, it has gained huge reputation in its area. During this period, Mr. Shipon purchased 10 acres land in the name of Messers Shipon Enterprise. Now, Mr. Shipon wants to sell Messers Shipon Enterprise. Mr. Azad wants to buy it. The question is that if Mr. Shipon wants to sell the firm entirely, then the land in its name will automatically go to Mr. Azad, or if Mr. Shipon wants to retain the land to himself, then he must transfer the land in his name from the name of his firm Messers Shipon Enterprise either by way of sale or any other way. Not all the personal properties of Mr. Shipon can be automatically treated as the properties of Messers Shipon Enterprise. Likewise, not all the properties of Messers Shipon Enterprise can automatically be treated as the properties of Mr. Shipon. There is clear difference.

Similarly, if a cheque is issued by Mr. Shipon under the seal, signature and bank account of Messers Shipon Enterprise, and on its dishonor if the holder of the cheque wants to file case under Section 138 of the Negotiable Instruments Act, 1881, then if only Mr. Shipon is made part as the accused, it may lead to lose the case without making Messers Shipon Enterprise as an accused representing by its Proprietary Mr. Shipon, or alternatively Mr. Shipon, the Proprietor of Messers Shipon Enterprise.

In proprietary firm, the owner can use separate seal, signature and bank account. It can have its own office, tax file and other documents. It can hold assets, properties, rights and liabilities. It is represented by its owner i.e. the proprietor. The proprietor can authorize anyone on his behalf to represent the same by executing special/general power of attorney or by appointing the manager/legal representative following the provisions of law. It can use official page/letter head. In business world, it can operate almost like a separate entity. Under our jurisdiction, sole ownership company is not recognized. There must be always more than one person to form a company. However, proprietor firm can run business firm legally.

Partnership Firm

More than one person can form partnership firm. For forming a partnership firm, two or more persons can execute a partnership agreement, form partnership, register the same with the Register of Joint Stock Companies and Firm (RJSC) and obtain trade license from the concerned office. It can use separate entity name, seal, signature, office address, hold assets, rights and liabilities. Its partners will share the rights and liabilities to the extent of their percentage of shares. For example : There are five shareholders, each having equal shares i.e. 20% and each will bear equal rights and liabilities. Amongst five shareholders, one or two or more can represent

the partnership firm, can sign all documents with seal, and can operate all financial documents including bank account and official instruments/documents. In the partnership deed, there should be all details of the rights, liabilities and representations of the partners.

Order XXX of the Code of Civil Procedure provides provisions for suits by or against firms and persons carrying on business in names other than their own in the following manner—

Rule 1. Suing of partners in name of firm

- (1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the court may direct.
- (2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

Rule 2. Disclosure of partners' names

- (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.
- (2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the court may direct.
- (3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all proceedings shall nevertheless continue in the name of the firm, but the names of the partners disclosed in the manner specified in sub-rule (1) shall be entered in the decree.

Company/Body Corporate/Institute/Organization

Any company/corporate body/organization/incorporate entity can be represented by its Chairman,¹¹ Managing Director,¹² Secretary,¹³ Manager¹⁴ or any other person (post) as authorized under the relevant law or its constitution documents including Articles of Association, By-Laws, etc. Now-a-days, Chief Executive Officer, Chief Operative Officer, Chief Financial Officer, Finance Director or any other post is seen to represent the corporate entity as authorized in the incorporation documents or by the Board of Directors. It can also appoint attorney by executing special/general power of attorney or authorize any of its officer/staff by executing letter of authority. Now-a-days one person company is possible. The owner of the company can represent the same.

Order XXIX of the Code of Civil Procedure provides provisions for suits by or against the corporations in the following manner—

Rule 1. Order XXIX of Code of Civil Procedure 1908 “Subscription and verification of pleading”

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Rule 2. Order XXIX of Code of Civil Procedure 1908 “Service on corporation”

Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

- (a) on the secretary, or on any director, or other principal officer of the corporation, or
- (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

11. Any person appointed as Chairman.

12. Section 2(1)(m) of the Companies Act, 1994 defines “managing director” means a director who, by virtue of an agreement with the company or of a resolution passed by the company in its general meeting or by its directors or by virtue of its memorandum or articles of association, is entrusted with the substantial powers of management which would not otherwise be exercisable by him and includes a director occupying the position of a managing director by whatever name called;

Provided that the powers to do administrative acts of a routine nature when so authorised by the directors such as the power to affix common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorsed negotiable instrument or to sign any certificate of share or to direct registration of transfer of any shares shall not be deemed to be included within the substantial powers of management:

Provided further that a managing director of a company shall exercise his powers subject to the superintendent control and direction of the directors.

13. Section 2(1)(u) defines “secretary” means any individual possessing the prescribed qualifications appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties.

14. Branch of any bank/financial institution or a body corporate can be represented by its Manager or similar type of post if so authorized by the relevant incorporation documents or law. Section 2(1)(ka) defines “manager” means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs and business of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not.

Rule 3. Order XXIX of Code of Civil Procedure 1908 “Power to require personal attendance of officer of corporation”

The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

2. Extension of Parties

It is also necessary to check whether the party means and includes the heirs, successors, assigns, attorney, legal representatives or anyone. For example : In a personal service contract e.g. a famous singer has agreed to sign a song in a concert; on the failure to do so, his/her heir or attorney can't substitute him/her. On the other hand, one purchased a land, and after his death his heirs will succeed the land unless otherwise transferred earlier.

3. Is there any agreement

When the problem comes, it needs to be checked first that whether there is any agreement between the parties. If the problem arises out of the agreement, then the problem is to be settled in accordance with the provisions contained in the Agreement. It is to be checked carefully whether there is any termination clause. What are the procedures of termination? What are the addresses for serving termination notices? Who are the parties? What is the governing law? What is the process of dispute resolution? Who are the signing parties to the agreement?

4. Dispute Settlement Clause / Arbitration clause

If the dispute arises out of the agreement/contract, it is required to check whether there is any dispute settlement clause. If there is no dispute settlement clause, then recourses under law can be taken. If there is dispute settlement clause, then the specific provision for settling the dispute must follow. Without exhausting the dispute resolution clause as provided in the agreement/contract, if your client takes recourse under law, it may ultimately lead to a failure result. If there is clause of mediation or amicable settlement in case of any dispute, then before taking legal action, the party must exhaust it. If there is arbitration clause (parties' arbitration or under the Arbitration Act, 2001), then party must take recourse of arbitration.

5. Governing Law

Governing law is one of the most important elements for taking any legal action. In case of joint venture agreement, or any transaction/contact/agreement involves foreign party/parties, the governing law can be different from Bangladesh. If there is no governing law provided in the agreement, then the laws of the jurisdiction/place where the agreement is executed are to be followed. If the governing law is provided as 'laws of Bangladesh', then Bangladeshi laws will be followed for the regulation between the parties. If the governing laws are provided of any countries other than Bangladesh, such as, laws of Singapore or England, then governing laws will be of that country.

6. Place

Place of execution is also very important. If the problem arises out of any agreement, the place of its execution should be checked for proper understanding of the dispute.

7. Savings

If there is any savings clause in the Agreement or in the Act under which a problem needs to be solved, that provision should be checked before taking any decision.

8. Exhaustion of Local Remedy

It is highly necessary for taking any legal action to know the nearest legal remedy provided by the relevant law or governing provision or otherwise agreed between the parties. For example : It is provided under Section 15 of the Building Construction Act, 1952 that an appeal shall lie against every order under section 3 or section 3A or section 3B or section 3C or section 3D or section 4 or section 5 or section 6 or section 9 of the same Act.¹⁵ If there is any provision of appeal or review or filing any sort of prior intimation/application, then before taking any legal action, the nearest/immediate legal recourse should be taken first.

9. Bar to jurisdiction

Before taking any action, the lawyer should check whether there is any bar upon the legal forum to take or not. For example : Artha Rin Adalat Ain, 2003 only allows the financial institutions (as defined therein) to file suit; therefore none can file suit under this Act unless the same is covered under the definition of financial institution as provided therein. For example : Section 14 of the Building Construction Act, 1952 provides that every order under section 3 or section 3A or section 3B or section 3C or section 3D or section 4 or section 5 or section 6 or section 9 shall, subject to the provision of section 15, be final and shall not be called in question in any Civil Court. When a particular suit or relief is barred under any law, then before taking any legal action, the lawyer should do reasonable study about the jurisdiction. For example : Article 34(5) of the Bangladesh Shilpo Rin Sangstha Order, 1972 provides bar upon certain reliefs, therefore seeking those relief one cant file suit.

Before taking any legal action, a lawyer should have clear knowledge about the relevant laws, current practice, judicial development and a good command over the law points. For example : in a statute there is provision that any action taken under this statute can't be challenged in a civil court. But the lawyer didn't check this provision before filling the suit. As a result, the suit must fail. If for rectification of share in the share registrar of a public limited company, if anyone files a civil suit or writ against the Registrar of Register of Joint Stock Companies and Firms, the suit will fail because there is specific provision under the Companies Act, 1994 for this. For this reason, it is always better to get some commands over the relevant provisions of law and judicial development on a particular issue when client come with the issue.

10. Waiver/Acquisance

For securing any rights and liabilities for the client, be sure about the waiver /acquiescence/exemption type clauses whether in the agreement. If yes, a lawyer must analyse the waiver /acquiescence/exemption type clauses before solving any problem.

15. Section 15 : Appeal - An appeal, if presented within thirty days from the date of the order appealed against, shall lie to such officer or authority as may be prescribed against every order under section 3 or section 3A or section 3B or section 3C or section 3D or section 4 or section 5 or section 6 or section 9, and the decision of such officer or authority on such appeal shall be final and shall not be called in question in any Civil Court.

11. Warranty/Guarantee

A lawyer must check whether there is any warranty/guarantee clause, and if yes, then the contents of those clause, and the rights/privileges or liabilities stated therein.

12. Force Majeure/ Act of God

When analyzing a case/problem a lawyer needs to check whether the problem arises out of any human activity or the same is act of god or out of force majeure situation. If it comes out of force majeure situation, a lawyer may not be able to solve the problem or bring any remedy for the client from other party. If a loss suffered by the client is purely out act of god and as a lawyer you understand it, the lawyer must not suggest the client otherwise and spend for it. A lawyer must suggest his/her client honestly according to the context. In the short run, a lawyer may lose a client, but in the long run the client will come back to the lawyer and will bring more clients. Moreover, the lawyer will earn honesty and client's confidence.

13. Alternative way

When there is more than a legal recourse a good lawyer must suggest his/her client the most effective one which is less expensive and complex.

14. Miscellaneous

There may some other things to check about. It depends on the skill, experience and competence of a lawyer. It may grow with time, study, effort and handling cases.

Keys to all types of legal drafting

In all types drafting including legal notice, agreement, plaint, written statement, writ petition, company matter, appeal, revision, leave petitions, etc there are few tips to be followed. These mostly include the standing of the parties (claimant/against whom relief claimed), statement of facts, statement of law and the relief claimed.

1. Parties

In every dispute suit, there must be more than one party. One party is the claimant who has claim against another party. So, there is always opposite party. In the legal notice, one party is the legal notice sender and the other party is the legal notice recipient. In the police station case, the person who files the case is called as informant and the other persons are called accused. In plaint, the filing party is known as the plaintiff and the other party is the defendant. In complaint petitioner, the person making the complaint is known as the complainant and the other side person is known as accused. In appeal, the person who files is known as appellant and the other side person is known as the respondent. In writ petitioner, the person filing writ petition is known as the writ petition and the person against whom the writ petition is filed is known as the respondent. In all cases, there are always contesting parties. In both cases, the parties should have locus standi i.e. both parties should be necessary parties as discussed earlier.

2. Statement of fact

Fact screening is one of the most important parts in drafting. When client comes to you, clients will share all their stories, sometimes even forgetting the most important fact. Clients

would forget or do negligence supplying all the documents, sometimes the most important documents. They may miss many important documents required to be supplied to the lawyer. After listening to the facts and examining the documents, the lawyer should set all the papers chronologically as per date. Yes, around bundles of papers, there are unnecessary papers. Before starting to draft, you must select the important papers keeping unimportant papers set aside. It is better to avoid repetition of facts. For avoiding the repetition, one simple trick can be followed. Synchronize the papers date-wise and write the facts according to the dates. Then there will be no repetition of facts, and the draft will be reading-worthy. Judge while going through the petition will be able to connect the facts chronologically.

If we arrange facts date-wise, it will lead us towards correct ascertainment of facts and cause of action chronologically, because dates never repeat themselves. Every application to the High Court Division, if founded on any statement of fact, shall set out the material facts, matters and circumstances on which the applicants relies.¹⁶ Statements of facts should be clear, without repetition and to the point without unnecessary exaggeration. The purpose is not to prepare a short or long petition. The moot purpose is to present the case story in such a way which is true disclosing real problem in dispute supported by all necessary evidences in hand. Description should be made in such a way which satisfies the requirement of the Court. Contents should be necessary for expressing the cause the action and supporting the relief as prayed for. The simple rule is that not to say more, not to say less, just say what its necessary in the petition.

3. Statement of law

After stating the facts, you must state your arguments. Your arguments will be substantiated by the points of law. The arguments you submitted should be very specific, clear, unambiguous and definite. Between-in the statement of facts i.e. last paragraph of statements of acts and the statement of law i.e. first paragraph of the statement of law, it is better to have a connecting paragraph of these two hitting the cause of action. Generally, in all sorts of draft before the higher courts statements of law are given after statements of fact. However, in the plaint or written statement statements of law are not much required. Statements of facts, cause of action and other necessary statements are enough.

4. Prayer / Relief

Relief is the gist of a draft. For the relief the client is taking legal recourse. Formulation of relief is very important. Factually, it largely depends on what the client wants. In law, it mostly depends on the lawyer's knowledge about law; because, prayer is limited and has already been determined under law. One cannot ask for a strange relief or surprising prayer unless the same is recognized by law. The lawyer must know how to formulate the prayer of the client into a legal relief. If the lawyer formulates any prayer which is barred by law or is not recognized under law, then the entire suit will fall. It will create a devastating situation for the client after all the expenses he incurred for the case. It will ruin the credibility of the lawyer. For that reason, a lawyer should have sound knowledge of relevant law. Before drafting and filling a case, a lawyer

16. Chapter IV, Rule 5, The Supreme Court (High Court Division) Rules, 1973.

must read the relevant law as a whole and also learn the latest judicial pronouncements / developments, otherwise the suit/case may fail ultimately.

Prayer portion in every petition should be very precise and specific in accordance with law. Use of complex words and equivocal expressions should be avoided in prayer. Prayer should be limited. It should not be more in numbers. It should be less and short but embracing all the reliefs as necessary for the client.

Some basic tips to remember—

- Drafting should legally correct and staying relevant to the subject matter,
- Write what is necessary, relevant, beneficial and legal for the clients. Sometimes, the clients will ask for many things which may not be permissible by law. It becomes the duty of the Advocate to fit the interests of the clients to into the legal scheme i.e. what is legally enforceable,
- Miser with words. No word should be used unnecessarily or irrelevant. We must used word what is necessary and required for securing the relief for the client,
- Addressing the subject matter correctly, concisely in plain and lucid wordings,
- Drafting should be clearly understanding to the Court and other party expressing the things your client exactly want or seek for,
- It should be clear, focused and without repetition,
- Clarity should be maintained throughout the entire petition i.e. from start to end,
- Facts to be organized chronologically without any puzzle or misunderstanding,
- Petition should express that the filing or drafting lawyer understood the case clearly, because unless you understand the same, you cannot make the Court or others understand about your case,
- Whatever is written in the petition, it makes sense with logic and rationality,
- Every word and sentence should be rational, necessary, reasonable and creating sense,
- Must avoid complexities, unnecessary things, absurdity,
- Cause title should be clear¹⁷,
- Names and addresses of the parties should be correct and clear,
- Use certified copy where mandatory,
- Use photocopy of document where certified copy or original is not available,
- Use certified copy even use of it is not necessary or optional,
- Photocopy must be clear and read-able and type copy,
- Affidavit or Verification where required,¹⁸

17. Chapter IV, Rule 2, The Supreme Court (High Court Division) Rules, 1973 provides that “in every application presented to the High Court Division, there should be stated, immediately after the cause title, the concerned provision and short title of the statute under which the application is made, the date of the order complained of, the value of the suit or proceedings out of which the application arises.”

18. Chapter IV, Rule 3, The Supreme Court (High Court Division) Rules, 1973 provides that “every application for which affidavit is necessary shall be produced before the Commissioner of Affidavits at the time when an affidavit in support of it is made, and that officer shall satisfy himself that the application is sufficiently stamped and shall certify accordingly; even, in case of an application in which no affidavit is necessary a certificate of the Stamp Reporter shall be necessary with regard to sufficiency of court-fee.”

- Time, date and place of affidavit and verification,
- Date-wise statements of facts,
- Statement relating to previous application or order,¹⁹
- Petition should be typed,
- Petition should be printed clearly in prescribed paper,
- Accepting Wokatnama and Instruction by Advocates,²⁰
- Wokatnama should be filled up clearly,
- Generally, we allow our clerks/assistants to fill up the Wokatnama and we do not check further whether the Wokatnama has been filled-up or executed properly. This is a bad practice. No matter how much busy you are, you may have few seconds to check it up before filing the same. And we must save a photocopy of the finally filled-up Wokatnama in our office file. It will serve many purposes. It will save us from many complexities and dispute that may arise out of Wokatnama which may prejudice our personal reputation,
- Petition should be signed / sealed by the party and Advocate, as necessary,
- Only the competent person having proper locus standi to sign the petition,
- Party should appear before the Commissioner of Affidavit for confirmation of swear,
- Spacing in line and other formats should be followed,
- Production if relevant documents,
- Provide statements as per the documents,
- Notice to other party,
- When certified copy is necessary, then put requisite in time,
- Not to lie before the Court,
- Check minutely whether the petition is fresh in nature or filed earlier or moved before any other Court. Make a clear statement in the petition to this effect. One small true

19. Chapter IV, Rule 6, The Supreme Court (High Court Division) Rules, 1973 provides that “when an application is made to the Court or to the Registrar in any matter in which any previous application was made to the Court or to the Registrar to the same effect, or with the same object, or with a similar object, the fact of such application having been made and the order passed thereon shall be clearly stated in the application.”

20. Chapter V, Rule 71, The Supreme Court (High Court Division) Rules, 1973 provides that “(1) No Advocate shall receive instructions from any person other than an Advocate of the Court, or the party himself, or a person holding a power of attorney from the party, or an employee, or relative of the party, or an Advocate of the subordinate court authorized in writing by the party.

(2) Where there are more parties than one and they appear by separate wokatnama, the wokatnama of one may be received from any other similarly authorized, but if they appear by one and the same wokatnama, it may be received from any of them, or from a person duly authorized by anyone of them, without special authority from others.

(3) When wokatnama is filed by an Advocate, he shall endorse on the back of it the name of the person from whom it is received, and if such person is not the client himself, the Advocate shall state the nature of the authority of that person, and the Advocate shall put and the date of his own signature and also his full name and address including telephone number and e-mail, if any, in the wokatnama.”

statement can save your reputation and the client's case from unnecessary dismissal or rejection or future hassles,

- Motion should be filed in the format as prescribed in the Rules,²¹

21. In this regard, the relevant provisions of the Supreme Court (High Court Division) Rules, 1973 are quoted below –

1. **Description of Motion :** In this chapter, the term Motion means presenting/moving before a Bench an application/petition which does not fall in the category of an appeal and which, before its registration as a case, requires a judicial order for the purpose of its acceptance and registration thereof.

.....

3. **General provision for Motion:**

- (1) **Filing of civil/criminal Motion :** In case of civil and criminal matters, every application/petition for Motion shall be filed with the Bench Officer of the appropriate Motion Bench on the first day of the week. In case of urgency such application or petition may be filed on any other working day with the leave of the concerned Bench.
- (2) **Serial Number:** The Bench Officer, on receipt of an application/petition for Motion, shall put therein a serial number and his initial with date and shall fix a seal and shall verbally inform the concerned Advocate or his law clerk of the serial number. For the purpose of this sub-rule, the Registrar shall ensure that similar seal is used by all Bench Officers of Motion Benches.

4. **Additional provision for Motion in Writ matters :**

- (1) **Affidavit necessary:** An application under article 102 of the Constitution, in short Writ Petition, shall be supported by an affidavit.
- (2) **Who can swear affidavit:** An affidavit in support of a writ petition shall be sworn in by the petitioner himself or, if permitted by the Court, by his representative duly authorized in writing. Such affidavit forms part of the writ petition.
- (4) **Validity period of affidavit:** A Writ Petition shall be mentioned before an appropriate Bench within 30 days after the affidavit is sworn in. After the said 30 days the validity of the affidavit for the purpose of hearing, on the writ petition shall expire, and the section shall place the Writ Petition before the appropriate Mention Bench for order.
- (5) **Documents:** When an application is made for an order or direction under clause (1) or (2) (a) of article 102 of the Constitution, the application shall be accompanied by the original document or, if available, the certified copy thereof, so that the function, act or proceeding complained of can be considered by the Court for issuance of such order or direction.
- (6) Where the petitioner relies upon a document, he shall annex the original, or if available, the certified copy thereof. But if the certified copy is not available, a legible photocopy of the original duly attested by the petitioner or his authorized representative or petitioner's advocate, may be annexed with the leave of the court. To ensure legibility of annexed documents, typed/printed copies should be filed.

5. **Additional provision for Motion in Civil cases :**

- (1) **Affidavit :** An application under section 24, 115, Order 47, rule 1 of the Code of Civil Procedure or any other provision of law presented as a Motion, shall be supported by an Affidavit.
- (2) **Who can swear an affidavit :** An affidavit in support of an application or petition for Motion in civil cases shall be sworn in by the applicant/petitioner himself or by his Tadbirkar.
- (3) The provisions of Chapter IV relating to application and affidavit shall mutatis mutandis apply to a Motion under this rule.
- (4) **Documents :** Every application/petition for Motion in civil cases shall be accompanied by the following:
 - (a) certified copy of the judgment or order , and the decree, if any, of the concerned subordinate court, if any, which is under challenge;
 - (b) if the applicant/petitioner refers to any other judgment/order/decree of subordinate court in support of the statement made in the application/petition, certified copy thereof;
 - (c) if the applicant/petitioner relies upon other documents, he shall annex the original, or if available, the certified copy thereof.
 - (d) if the certified copy of that other document is not available, legible photocopy of the original duly attested by the petitioner/applicant or his authorized agent or petitioner's Advocate, may be annexed with the leave of the Court.

- While reading and sorting the documents, read those as a whole and without unnecessary skip,
- While reading a case from digest or law report, read as a whole, not the ratios only,
- Don't refer a case without analysing into details,
- Sincerely try to be always available for clients,
- Never say No to your any work in initial days of lawyering because it will help to learn,
- Don't run after money, do run after excellence, rest will follow automatically,
- Share income with others who assist you because it will make you feeling strong and accompanied,
- Share your knowledge with others,
- Don't abuse your juniors, associates, assistants and clerks,
- Don't lie to the court,
- Don't give false hope to the clients,
- Don't run after marketing, we need basic lawyering for judicial development,
- Try to be a contributory in this field,
- Don't hesitate to carry out files and books
- Do respect your seniors,
- Shouldn't be over confident about law unless you read it minutely with judicial interpretation,

(5) To ensure legibility of the annexed documents, typed or printed copies shall be attached.

(6) **Validity period of affidavit :** An application/petition for Motion in civil cases shall be filed with the Bench Officer of an appropriate Bench within 45 days after the affidavit is sworn in and on the expiry of the said 45 days validity of the affidavit shall expire.

Explanation: The period of 45 days shall not be construed as an extension of the period of limitation, if any.

6. Motion in Criminal Cases :

(1) **Affidavit:** An application under section 439, 491, 498, 526, or 561A of the Criminal Procedure Code or any other provision of law presented as a Motion, shall be supported by an Affidavit.

(2) **Who can swear an affidavit:** An affidavit in support of an application or petition for Motion in criminal cases shall be sworn in by the applicant/petitioner himself or by his Tadbirkar.

(3) The provisions of Chapter IV relating to application and affidavit shall mutatis mutandis apply to a Motion under this rule.

(4) **Documents:** Every application/petition for Motion in criminal cases shall be accompanied by the following:

- (a) certified copy of the judgment or order of the concerned subordinate court, if any, which is under challenge;
- (b) if the applicant/petitioner refers to any other judgment/order of a subordinate court in support of the statement made in the application/petition, certified copy thereof;
- (c) if the applicant/petitioner relies upon other documents, he shall annex the original, or if available, the certified copy thereof.
- (d) if the certified copy of that other document is not available, legible photocopy of the original duly attested by the petitioner/applicant or his authorized agent or petitioner's Advocate, may be annexed with the leave of the Court.

(5) To ensure legibility of the annexed documents, typed or printed copies shall be attached.

(6) **Validity period of affidavit:** An application/petition for Motion in criminal cases shall be filed with the Bench Officer of an appropriate Bench within 45 days after the affidavit is sworn in and on the expiry of the said 45 days validity of the affidavit shall expire.

Explanation: The period of 45 days shall not be construed as an extension of the period of limitation, if any.

- Should not be arrogant in Court and with the Seniors. In fact, we don't have any right to be arrogant with anyone,
- Be a simple, kind and knowledge-able person. Feel thirsty for knowledge and work. Then, you will not get any time for being rude or arrogant,
- Be a simple, kind, sincere and honest person. Lawyering though slow is a right path to become a contributory and reformist for the society. Do value your work. If you respect your profession, you will earn respect automatically.

David E. Pierce, Director, Business and Transactional Law Center, Washburn University, School of Law in the “Professional Skills Instruction (Introduction to Legal Drafting)”²² suggested the legal drafting basics in the following manner—

“Legal” documents seek to effectively account for the facts and law that can impact the parties to a document. The lawyer’s role in “drafting” a legal document is to ensure they identify all the relevant facts and law and then apply them to prepare a document that accomplishes their client’s goals.

Legal documents are typically a set of instructions for others to follow in an effort to fulfill the intent of one or more parties to the document. Clear, complete, and functional instructions promote the client’s goals.

A. Summary of the Drafting Process

The process can be summarized and reduced to three steps :

- (1) Identify the facts that define what must be addressed in the document;
- (2) Research the law:
 - (a) implicated by the facts; and
 - (b) implicated by the subject matter of the document; and
- (3) Use the law and facts to state the terms of the document that will accomplish your client’s goals.

B. The Drafting “Skill”

Drafting consists of the following skills :

- (1) Obtaining information from the client and other sources necessary to fully understand the client’s goals and the commercial context in which the parties operate;
- (2) Preparing a rough draft expressing the basic agreement the client contemplates;
- (3) Analyzing the rough draft to identify the legal issues that impact each term of the rough draft;
- (4) Researching all legal issues to identify how the applicable law should be accounted for in the agreement;
- (5) Analyzing the rough draft and the applicable law to identify planning and structuring opportunities available to the client;
- (6) Redrafting the agreement by applying the applicable law to accomplish the client’s planning, structuring, and underlying business goals;

22. <https://www.washburnlaw.edu/profiles/faculty/activity/_fulltext/pierce-david-2008-introductiontolegaldrafting.pdf>

- (7) Using the client to test the document to ensure it will be appropriate for their business needs, including the client's administration of the document; and
- (8) Editing and revising the document to ensure the deal is stated using a format and language that are clear, concise, and functional.

The ultimate goal of this process is to ensure that for any document a lawyer drafts, or reviews, they understand fully why each word, sentence, clause, or paragraph is being used, and the effect it will have on their client. Anything less is unacceptable lawyering.

The drafting process is the same regardless of the type of document. The principles and goals are identical whether drafting a contract, conveyance, letter, settlement, interrogatory, or petition. In each situation the attorney must know what they desire to accomplish, the facts and law that apply, and how the document uses facts and law to create the desired legal relationships.

To conclude, it is pertinent to mention that while drafting the petition we should not miss out any point which is adverse to our client. Though client may have the tendency to avoid or hide the points which apparently go against him/her. But as Advocates, we should not do it. We must make client understand the benefit of disclosing all the truths in the petition even if it seems a bit contrary to his/her interest. Because, before we can disclose the points which are adverse to us, if the opponent side discloses the same before the Court, then it will ruin our case badly. It will save the client. It will save the entire case. We should remember that this profession requires highest degree of integrity and ability; because, our impact on the society is greater than any other professionals. Our service includes all the social aspects. Therefore, it requires highest commitment, sense of responsibility, integrity, ability and truthfulness. Thus, in the petition we are required to write what is necessary, relevant, beneficial and legally enforceable for the clients. It is the duty of the Advocate to fit the interests of the clients into the legal scheme using meaningful and effective words precisely with proper legal knowledge and articulation of acts with authenticity and sincerity.

CHAPTER 2

Agreements – Registered or Unregistered

From procedural perspective, deeds/agreements can be divided into two types - registered or unregistered. Sections 17 and 17A of the Registration Act, 1908 provide the list of agreement which are necessary to be registered. Besides, any agreement valuing Tk. 100 or more can be registered at the option of the parties. Generally, formats of most of the registered agreements are provided under statute e.g. sale deed, agreement for sale, deed of irrevocable power of attorney, mortgage deed, exchange deed, trust deed, lease deed, etc. Where format is provided, the parties can't go beyond that. Parties must follow the format for registration. But where no format is prescribed, the parties can follow general formats. Nevertheless, so far format is concerned, almost all agreements follow common formats and share some common ingredients.

As an Advocate, our roles are multifarious both in registered and un-registered agreements. Though registered deeds are mostly formatted, still to fill-up the formats as per legal requirements and add flesh into the skeleton are very important. If the deed concern immoveable property including land, building, the determination of chain of title becomes very important. If it concerns lease or partition or power of attorney, the requirements for setting out the appropriate conditions which will cover up almost all wanting of the parties concern. An agreement / deed acts as the by-laws or guiding constitution between the parties. Therefore, the agreement must address all possible situations, requirements, wanting and conditions as may require for the subject matter between the parties concern. As a lawyer, we play very important role in drafting the agreement for them. The more the draftsmen skill the more the draft is mature and comprehensive.

Without the help of an expert contract lawyer, the client may get an agreement that does not serve the purpose and save their interests. Generally, clients do not know the legal terms having legal meaning. They may not be able to address all legal issues as may require in an agreement which may be able to solve their problem arising out of that agreement in future. The clients may draft a contract that does not completely protect their rights and interests, especially if they are unaware of what those rights are under the law. Advocates are trained and taught to make sure their clients' interests are upheld in the stipulations of a contract in the event of future conflict. Advocates will ensure the legality of the agreement and its binding force. They will ensure effectiveness, usefulness, versatility and application of the agreement.

And, it is pertinent to mention that contract drafting is a highly profitable legal service. For the big scales contracts, generally the clients pay highly. Sometimes, it can earn more income for you than a case can. It is hassle-free, and you do not need to face complex court procedures. It can give you comfortable working zone. There are many law chambers that focus more on in-house works rather than litigations. They do fine as well. They capture a notable place in corporate and commercial legal sector. Giant chambers charge high for drafting the contracts.

In addition, drafting the contract may also bring you accomplishment with regard to set-out the governing principles, terms and conditions between the parties concern. You drafted contract

will act as a constitution for them. It can be interpreted by the Arbitration Tribunal and the Court. It can act as a legal instrument. It will guide them and solve their possible problems. It will bind them. It will help them to accomplish the purpose and subject-matter of the contract by avoiding conflicts that may come on their way regularly. Therefore, a comprehensive drafting can both earn material and objective satisfaction for us as lawyers. Therefore, drafting contracts should be taken and valued seriously. The more you are able to think widely and prudently the more your drafted contract is comprehensive. It requires high skill coming from sincere study, devotion and experience.

Basic things to be contained in any agreement—

- Name of the agreement,
- Date of execution,
- Date of enforcement,
- Generally prospective effect, if parties want to give it retrospective effect then specific provision to this effect,
- Details of the parties showing the legal competency of the parties to execute the agreement,
- Agreement to be executed by the person having legal standi and competency,
- Parents names, present and permanent address, age, nationality, service of the parties,
- Whether parties to include their heirs, assigns, representatives, etc,
- Mention about first party(ies), second party(ies) or more with specific identification,
- Recital containing the perspectives of execution of the agreement – background of the agreement,
- Terms and conditions containing the rights and liabilities of each party,
- Performances of each party,
- Tenure,
- Consideration,
- Description of subject matter /property, if necessary,
- Termination,
- Default clause, if necessary,
- Compensation, if necessary,
- Delay clause, if necessary,
- Notice period,
- Dispute settlement,
- Governing laws,
- Binding nature,
- Executed voluntarily without any coercion, undue influence, fraud, etc,
- Force majeure situation / Act of God, if necessary,
- Waiver. Acquittance, estoppels, if necessary,
- Warranty, Guarantee, if necessary,
- Confidentiality, Non-disclosure provision, if necessary,
- Statement regarding execution in presence of the witnesses,
- Number of pages,

- put page number in a clear space (read-able),
- Schedule, if necessary,
- Signature of the parties,
- Signature of the witnesses,
- Thumb impression on each page by each party,
- Any other necessary information as required by the parties,
- Use proper stamp paper as prescribed by law.

While drafting any agreement, the parties' intention and wanting should be given priority. A lawyer will just give a legal shape to the intention and requirements of the parties. There should not be anything which is barred by law or impossible to perform. A lawyer must guide the clients to make their agreement all inclusive determining the specific rights and liabilities of the parties for avoiding all future difficulties as far as possible.

Few samples are given below.

Sample

TENANCY AGREEMENT

Date :.....

This Tenancy Agreement is made on between the following Parties-

Between

(1). Mr. X....., (2). Mr. Y..... and (3). Mr. Z, all are successors of late Rezaul Karim; all are represented by Mr. Z for the purpose of this Agreement, address of all: House No. 11, Road No. 11/A (New), Dhanmondi R/A, Dhaka, hereinafter referred to as the **FIRST PARTY/LESSOR** (*which expression where the context so admit shall mean and include its successors, executors, administrators, representatives and assigns of the one part*).

.....FIRST PARTY/LESSOR.

AND

Official Methaphor Limited, of 51, Shaheed Tajuddin Ahmed Sharani, Tejgaon C/A, Dhaka – 1208, represented by its Managing Director Enamul Hoque Chowdhury, hereinafter referred to as the **SECOND PARTY/TENANT** (*which expression, where the context so admit shall mean and include his/its successors, executors, administrators, representative and assigns of the other part*).

.....SECOND PARTY/TENANT.

Whereas, late Mr. Rezaul Karim was the owner of the schedule premise, and after his death, his heirs i.e. the First Parties as referred herein above have become the successors and owners of the schedule premise, and they are represented by Mr. Z for the purpose of execution of this Agreement, and they want to let it on rent;

Whereas, the Second Party wants to take the schedule premise on rent from the First party;

Now, both the parties want to enter into an Agreement; therefore they want to execute this Tenancy Agreement;

NOW IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS :

1. The Agreement is made and executed for a period of 3 (Three) years and the same will be renewed by the consensus of both the LESSOR and TENANT. This Agreement is going to be effective since and on the same day the possession of the schedule premise will be handed over to the TENANT by the LESSOR.
2. The LESSOR has agreed to receive Tk. 50,00,000/- (Taka Fifty Lac) only from the TENANT as an advance for the purpose of tenancy of the premise as described in the schedule below. The TENANT is paying the advance amount of Tk. 50,00,000/- (Taka Fifty Lac) only on the day of signing and executing of this Agreement. An acknowledgment receipt will be given by the LESSOR admitting the receiving of said Tk. 50,00,000/- (Taka Fifty Lac) only.
3. The LESSOR has agreed to receive Tk. 2,50,000/- (Taka Two Lac and Fifty Thousands) only from the TENANT as a monthly rent of the Schedule Premise. The monthly rent will be paid between 1st day to 7th day of each month (current month), and this Tk. 2,50,000/- (Taka Two Lac and Fifty Thousands) only will be counted as basic rent without all other charges, bills or any other extra expenses. It shall be the liability of the TENANT to pay all other charges, bills including gas, electricity, water, service, utility or any other extra expenses.
4. That this monthly rental amount will be increased @ 10% every year as agreed between the parties.
5. That for the repayment of rental amount of every year, the TENANT will pay 12 (twelve) cheques on the day of execution of this Agreement. And after the end of 1 (one) year of this Agreement, the TENANT will issue fresh 12 (twelve) cheques for the next year, and the same will continue as long as this Agreement will remain in force.
6. That all the financial transactions in favor of the First Party by the Second Party will be made as per the name of It means that the aforesaid amount of advance pay, monthly rent, cheques, pay order or any other financial transaction will be made/issued as per the name of the Karim Leathers Limited in favor of the First Party.
7. The TENANT shall use the Schedule Premise as described in the schedule below only for commercial purpose. It is noted here that if the TENANT will use the Schedule Premise in other purposes, the same will be treated as breach of this Agreement and the LESSOR can take legal action against the TENANT for the same.
8. The advance money will not be deducted for any purpose and the same will be returned after the expiry of the Agreement.
9. If the TENANT fails to pay rent within 1st to 7th days of each month (current month) and it continues up-to or more than 3 (three) months, then the TENANT shall pay @5% interest upon the each month's rent.

10. The TENANT shall be at liberty to make necessary changes in the schedule premise only for interior decoration purpose without causing any harm/crack to the main structure; in case of any harm in the main structure or basic establishment of the Schedule Premise, and then the TENANT shall be liable for carrying out necessary costs/expenses for repairing the structure.
11. The TENANT shall not sub-let the schedule premise and shall not use it for any illegal, immoral or prohibitory purposes. And for any kinds of illegal, immoral or prohibitory activities in the schedule shop the TENANT shall be entirely responsible.
12. The TENANT shall use the schedule premise with good care and caution. The LESSOR shall have the right to visit or inspect the schedule premise time to time in presence of the TENANT.
13. If the TENANT breaches the terms and conditions of the Agreement, the LESSOR shall be at liberty to take legal action against the Tenant the law.
14. For termination of this Agreement the party has to serve 90 (Ninety) days prior notice in writing upon the other party.
15. The terms and conditions contained in this Agreement shall not be amended and/or altered without the mutual agreement in writing of the parties hereto and shall be binding upon both the LESSOR and the TENANT and their respective heirs, administrators, successors-in-interest and legal representatives.
16. This Agreement is composed in 3 pages and attested by 2 witnesses.

SCHEDULE OF SHOP

More or lesssft floor area common space but excluding stairs on the Floor of 95, New Elephant Road, City Super Market, Dhaka for exclusive use as shop by the lessee. The lessee cannot change the type of business stated above or use the demise premises otherwise and it is restricted for the purpose stated here.

In witness whereof the owner and the tenant hereto put their respective signatures on this evictable tenancy agreement with their free will and consent on the day month and year first above written.

Signature of the LESSOR

Signature of the TENANT

Witnessed by:

Witnessed by:

1.

2.

Address:

Address:

Sample

Share Transfer Agreement

Executed on.....

This Share Transfer Agreement is executed on for transferring 20440 shares (Schedule ‘A’ shares) out of total 3,50,000 shares of the RN Textile Mills Limited, Reg. No. C- 50 847, Reg. Date: 22.10.2003, a private limited company registered office at (henceforth referred to as ‘the Company’) amongst the following parties-

BETWEEN

Jahanara Begum, daughter of Ali Haider chowdhury and Mariam Akter, present address permanent address: 61/1, Tejkunepara, Tejgaon, Dhaka, Date of Birth, National ID/Passport No., *henceforth referred to as the First Party / Transferor.*
.....**First Party / Transferor.**

AND

(1) **Shahadat Hossain Chowdhury**, son of Rimon Hawlader and Konica Akter,, Date of Birth, National ID/Passport No., (2) **Tipu Sultan**, son of Rimon Hawlader and Konica Akter, Date of Birth, National ID/Passport No., and (3) **Akbor Hossain**, son of Rimon Hawlader and Konica Akter, Date of Birth, National ID/Passport No., Address of all permanent Address: 61/1, Tejkunipara, Tejgaon, Dhaka. Present Address, *henceforth referred to as the Second Parties / Transferees.*

.....**Second Parties / Transferees.**

(The aforesaid expressions as the First Party and the Second Parties shall include their heirs, successors, assignees, legal representatives or lawful authority).

Whereas, the First Party / Transferor is the owner and shareholder of 20440 shares of the aforesaid Company namely RN Textile Mills Limited, Reg. No. C- 50 847, Reg. Date: 22.10.2003 as described in the Schedule “A” of this Agreement;

And whereas, the Second Parties / Transferees are also the Shareholders and Directors of the said company;

And whereas, the First Party wants to transfer her aforesaid shares by way of sale to the Second Parties;

And whereas, the Second Parties want to purchase the aforesaid shares of the First Party by paying reasonable consideration as agreed between the parties in the manner as described in the Schedule “B” of this Agreement;

THEREFORE, BOTH THE AFORESAID PARTIES ARE AGREED TO EXECUTE THIS AGREEMENT TO GIVE EFFECT THE AFORESAID OBJECTIVES UNDER THE FOLLOWING TERMS AND CONDITIONS—

1. That this Agreement shall come into effect on the date of signing/executing this Agreement by all the parties.
2. That the First Party has only a Son namely, age of who is going abroad for pursuing his further studies. For pursuing his further studies, the First Party needs money. For that reason she offers the Second Parties to buy the Schedule 'A' shares in consideration of Tk. 1,77,01,040/= (One Crore Seventy Seven Thousand One Thousand and Forty) as mentioned in the Schedule 'B', and the Second Parties are agreed to buy the shares at the consideration of Tk. Tk. 1,77,01,040/= (One Crore Seventy Seven Thousand One Thousand and Forty) thereof.
4. The instant process of selling the aforesaid shares by the First Party to the Second Parties was duly informed to the Board of Directors of the said Company. They have also given consent to this share transfer by resolving a positive decision unanimously taken in a Board Meeting held on; whereupon the Board also fixed the par share value is fixed as Tk. 866 as per the valuation of the entire assets, properties and liabilities of the Company; accordingly the total share value of said 20440 shares is fixed at Tk. Tk. 1,77,01,040/= (One Crore Seventy Seven Thousand One Thousand and Forty); therefore the total consideration value of the shares is fixed as Tk. 1,77,01,040/= (One Crore Seventy Seven Thousand One Thousand and Forty). The price fixed thereof is also taken as agreed and binding amongst the parties of this Agreement.
5. That on the date of signing of this Agreement, the Second Parties will pay Tk.out of total consideration amount as stated above directly to the First Party in cash. The rest money amounting Tk.will be paid by the Second Parties to the First Party in the manner as stated under Schedule 'B' of this Agreement. In case of failure to pay the money in the manner as described in the Schedule 'B', the First Party can re-claim her shares proportionate to the not-paid shares (if left thereon).
6. That immediately after signing of this Agreement, the First Party in cooperation with the Second Parties will take all necessary steps for smooth transferring and registering of the Schedule 'A' shares in the name of Second Parties with the aforesaid Company Register, the RJSC and all other concerned authorities and will transfer share scripts (if any) to the Second Parties. The First will also execute 3 (three) separate Affidavits in favor of the Second Parties declaring and confirming her share transfer to the Second Parties and also execute Form 117 under the Companies Act, 1994 and all other necessary documents (as required by law) for smooth transferring her shares in favor of the Second Parties.
7. The aforesaid 20440 shares of the First Party will be taken equally by the Second Parties in the manner as described in the Schedule 'A'. Immediately after executing this Agreement, the Share Register of the Company will be rectified and the shares of the First Party will be registered in the names of the Second Parties.
8. This Agreement shall be treated as the full, final and absolute intention and attempt of the First Party regarding the complete transfer of the ownership and possession of the schedule 'A' shares to the Second Parties; and in the Schedule 'A' shares First Party or any of her heirs/legal representatives or attorney will have no claim, entitlement or right to the schedule 'A' shares.

9. That both the Parties shall co-operate with each other to execute the Agreement and if any signature is required in future.
10. That after signing this Agreement all previous signed Agreement related to this matter will be null and void.
11. That this Agreement has been executed by all the parties voluntarily in their sound health and mind without any sort of coercion and undue influence.
12. That this Agreement and interpretation of its terms and conditions will be construed and governed by and in accordance with laws of Bangladesh. Any dispute arising out of this Agreement will be resolved under the laws of Bangladesh. In order to settle dispute, the parties will try to resolve the same by amicable settlement. In failure to solve amicably, the party will serve 30 (Thirty) days notice in writing for amicable settlement.
13. That this Agreement and all of the provisions hereof will be binding upon the parties hereto and their respective heirs, successors-in-interest and permitted assigns.
14. That this Agreement shall be printed in 2 (two) sets in original in Tk. 500/- stamp paper each.

Description of Shares to be Transferred, Transferee and Transferors
Schedule ‘A’

Name, address and other details of the Transferor	Name, address and other details of the Transferees	Number of Shares	Total shares.
Jahanara Begum (the First Party of this Agreement), Date of Birth....., National Id No....., Present Address....., Permanent Address.....	Shahadat Hossain Chowdhury (the Second Party of this Agreement), Date of Birth....., National Id No....., Present Address....., Permanent Address.....	6814 (Six Thousand Eight Hundred and Fourteen)	20440 (Twenty Thousand Four Hundred and Forty)
Jahanara Begum (the First Party of this Agreement), Date of Birth....., National Id No....., Present Address....., Permanent Address.....	Tipu Sultan (the Second Party of this Agreement), Date of Birth....., National Id No....., Present Address....., Permanent Address.....	6813 (Six Thousand Eight Hundred and Thirteen)	
Jahanara Begum (the First Party of this Agreement), Date of Birth....., National Id No....., Present Address....., Permanent Address.....	Akbor Hossain (the Second Party of this Agreement), Date of Birth....., National Id No....., Present Address....., Permanent Address.....	6813 (Six Thousand Eight Hundred and Thirteen)	

Description of mode of payment by the Transferees of Shares to the Transferor
Schedule 'B'

- (i) Per share value is fixed as Tk. 866; accordingly the total share value of said 20440 is fixed as Tk. 1,77,01,040/= (One Crore Seventy Seven Thousand One Thousand and Forty); therefore the total consideration value of the shares is fixed as Tk. 1,77,01,040/= (One Crore Seventy Seven Thousand One Thousand and Forty) by the parties of this Agreement which is also confirmed in the Board Meeting as per the Minutes of the Board of Directors.
- (ii) The Second Parties together will pay Tk. Tk. 1,77,01,040/= (One Crore Seventy Seven Thousand One Thousand and Forty) as a total consideration value of the aforesaid shares to the First Party.
- (iii) Out of said total amount Tk. 1,77,01,040/= (One Crore Seventy Seven Thousand One Thousand and Forty), on the day of signing this Agreement the Second Parties will pay Tk.to the First Party.
- (iv) The Second Parties will rest amount of money Tk.to the First Party in next 2 (two) years of signing this Agreement in quarterly installments per year on equal amount of size i.e. in next 52 (two) years, there will be 8 (eight) quarterly installments, and Tkwill be paid against per installment.

IN WITNESS WHEREOF, THE PARTIES HERETO SIGN THIS DEED OF CONTRACT ON THE DAY, MONTH AND YEAR MENTIONED ABOVE.

Signatures of the Witnesses:

: Signature of the First Party

1.

Name:

Date of Birth:

Son/daughter of:

Address:

1.

2.

Name:

Date of Birth:

Son/daughter of:

Address:

2.

3.

3.

Name:

Date of Birth:

Son/daughter of:

Address:

(please put thump impression on each page)

(Please make the son of the first party as a witness to this Agreement)

Signatures of the Second Parties

Sample

DEED OF TRUST

This Deed of Trust is made on this the 18.05.2017 of the Christian Area.

Between

- (1) Ltd and (2) Designs Ltd, all are the private limited companies incorporated under Companies Act, 1994 having all of their offices at House # 37,, Dhaka, Bangladesh, represented by their Chairman M., son of late, permanent address: House No. 24, Dahka – 1209, date of birth:, National ID No., hereinafter called “**the Settlers**” or the Sponsors of the Trust as one part.

.....Settlers / Sponsors of Trust.

And

- (1), wife of M, daughter of, permanent address: House No. 24,, Dhaka – 1209, date of birth:, National ID No., selected by the Settlers as **the first Chairman and Managing Trustee** of the Trust under this Deed along with other members/Trustees of the Trust Board as resolved mutually amongst the Trustees of the Board of this Trust, hereinafter called the Trustees of the other part as follows-
- (2) M, son of late, permanent address: House No. 24,, Dahka – 1209, date of birth:, National ID No.,
- (3) M, son of late, permanent address: House No. 24,, Dahka – 1209, date of birth:, National ID No.,
- (4) M, son of late, permanent address: House No. 24,, Dahka – 1209, date of birth:, National ID No.,
- (5) M, son of late, permanent address: House No. 24,, Dahka – 1209, date of birth:, National ID No.,
- (6) M, son of late, permanent address: House No. 24,, Dahka – 1209, date of birth:, National ID No.,
- (7) M, son of late, permanent address: House No. 24,, Dahka – 1209, date of birth:, National ID No.,

(Henceforth jointly referred to as ‘the Board of Trustees’ and the numbers of trustees can be increased or decreased by the decision taken by simple majority of the existing Trustees of Board).

**.....Chairman-Managing Trustee
and the Trustees of the Trust Board.**

Whereas, the Settlers are the private limited companies and as a part of their corporate social responsibilities and with pure intention to do charities for the social welfare, they are eager for forming and creating a charitable trust for public purposes by way of transferring their income and profit or receiving fund otherwise from time to time to the “Trust”, represented by its Chairman and Managing Trustee Ms. and other Trustees with the aim of giving effect in perpetuity for the purposes and objects mentioned herein below;

And whereas, the Trustees have, at the request of the Settlers voluntarily agreed and expressed their willingness to act as Trustees and to hold and apply the said Fund of this Trust and all other, gifts, profits, interests, contribution, subscriptions and donations given to Fund of this trust for such purposes and objects as settled in this Deed;

And whereas, the aforesaid Settlers by their respective meetings of their Boards of Directors resolved that they will form and create this Trust for charitable purposes as per the terms and conditions as stated in this deed;

And whereas, the creation and formation of the Trust under this deed is absolutely in accordance with the provisions of existing laws of Bangladesh and not barred by or contrary to provisions of the respective Memorandums and Articles of Associations of the Settlor Companies.

NOW THEREFORE, THIS DEED WITNESSETH AS FOLLOWS :

1.0. DECLARATION OF TRUST :

The Settlers do hereby declare and confirm that they shall give, convey, transfer, grant to the Trustees immediately the sum of Tk. 1,00,00,000/= (Taka One Crore) only for the creating of Trust Fund (which will include all the subsequent funds given to this Trust by the Settlers or otherwise) under this Deed with and subject to the powers and provisions hereinafter contained thereof. The Trustees shall hold the said Fund of the Trust and the profits and income thereof and the stock, fund, securities, donations, contributions, subscriptions and all kinds of properties movable and immovable, both present and future given to or acquired for this Trust (shortly referred to as “the Trust Fund”) upon the Trust and with and subject to the objectives, terms, conditions, powers, provisions, agreements and declarations hereby declared in this Deed.

2.0. NAME AND ADDRESS OF THE TRUST :

The name of Trust created and formed by this Deed will be “..... **Trust**” at address: House # 37,, Dhaka, Bangladesh. The office and branch offices of this trust can be moved and established in any place of Bangladesh.

3.0. OBJECTIVES OF THE TRUST :

This Trust will embrace all the objectives of charitable and social welfare/social development activities/works for the purposes including the following—

- 3.1. To advance financial help and all kinds of assistances for eradication of poverty, infrastructure development, promotion and development of the society, educating poor students, taking care of infant or orphan/street children or homeless people, spreading moral education/values/principles amongst people, and also to set up educational, training or healthcare institutions, such as schools, colleges, universities, hospitals, nursing colleges, training schools of various types, shelter for helpless old man, infant, orphan and woman, rehabilitation center for the drug addicted people or other mentally or physically challenged people, and also to grant stipends to meritorious students for pursuing higher study;

- 3.2. To finance for implementing various projects for facilitating service for healthcare for the poor people, employment generation, housing for the poor, textile, education, financial services for the people, nutrition for malnourished children, providing safe drinking water, introducing renewable energy and other activity beneficial to the poor and the disadvantaged people in a business manner with the intention to improving the socio-economic condition of the country as a whole;
- 3.3. To do and carry all kinds of projects and initiatives for eradicating poverty and other challenges in the society, and to secure basic human rights and good life for the people in need and also to ensure sustainable development in the society by contributing on all kinds of promotion and development in the society including technological, environmental, infrastructure, moral, spiritual, educational and other types;
- 3.4. To contribute on promotion and development of education and knowledge by establishing school, college, university or any kind of institution, affiliating with the education Boards, Universities, National Universities, University Grant Commission, and other bodies as may be required to run Medical Schools, Colleges, Training centers, Postgraduate Institutes on any branch of medical science, pharmaceutical sector and other like institutions, arranging seminar, symposium, conference, colloquium, public lecture by inviting famous national or international scholar, funding scholarship for the meritorious student home or abroad, setting up library or consultancy center, distributing books or other education materials, establishing research institution/center/academy, publishing or circulating journal(s), book(s), working paper(s), bulletin(s), newsletter(s), pamphlet(s) and other article(s), reports, information about activities of Trust and other matters of interest to researchers and other concerned in the field and for the promotion of the objects of this Trust;
- 3.5. To organize conferences, seminars, workshops, symposiums, extensive lectures on various health related subjects, debates for interested persons and to provide exchange of their views at the grassroots level with different low-income, disenfranchised and unprivileged groups, as well as in national and international conferences, workshops and training and educational program;
- 3.6. To help Government and Non-Government Organizations of Bangladesh to create awareness as to activities involving healthcare system or to get affiliated with academic and research institutions, both foreign and local and work jointly on healthcare, medicine, pharmaceuticals sector;
- 3.7. To develop awareness, moral values, consciousness and knowledge of mass people about social issues, healthcare, various diseases, public health issues, reproduction, nutrition and other needful things for the benefit of the society and mankind;
- 3.8. To purchase, hire, lease, exchange or otherwise acquire property movable and immovable (including land), tangible or intangible (including copy rights, patents and intellectual properties) which may be necessary or convenient for the purpose of the trust;
- 3.9. To construct/repair/establish buildings or structures as may be necessary or convenient for the purpose of the organization and also to promote, incorporate companies and firms for generating income which will be utilized for the purpose of achieving the objects of this trust or social business enterprise;

- 3.10. To provide health insurance facilities and/or establish companies, undertake and fund research projects, experimental projects to help create social businesses enterprise, invest Trust Fund or any income thereof for establishing private and public limited companies, invest the Trust Fund or any income thereof for floating any public company in stock exchange and to invest Trust Fund or any income thereof in stock exchange by purchasing equity shares, debenture stock, bonds, derivatives and any other instrument as may be available in the stock exchange in Bangladesh and also to invest the Trust Fund or any income thereof for floating any public company in stock exchange.
- 3.11. To attain the business objectives of the Trust, the Trustees can enter into partnership, joint-venture, take-over or amalgamation with any other Company/Firm/Institution and also to take loans from bank/financial institutions/any other organizations in such manner as the Trustees thinks fit and proper for the benefit of the beneficiaries of this Trustee, and in doing so the Trustees can lease, let out on hire, mortgage, pledge, sell or otherwise dispose of the whole or any part of the undertaking of the Trust or any kind of business, property, rights or assets of any kind belonging to this Trust of any share of interest thereof in such manner and for such consideration as the Trustees may think fit;
- 3.12. To borrow money from various banking and/or other financial institutions for the purpose of achieving the objects of the trust and to furnish security or guarantee for borrowing any money from any bank by the trust or any of its affiliated organizing including companies;
- 3.13. To mortgage the properties of the trust for the purpose of raising finance and to furnish collateral of any kind for the purpose of securing finance in order to achieve any of the objects of the trust;
- 3.14. To increase the capital and income or the trust in the manner the trustees consider most beneficial for the purpose of the trust and to invest such income in profitable ventures, business or industrial undertaking and to undertake direct sale or trans position of or to vary such investment otherwise to capitalize on funds;
- 3.15. To amalgamate with any other charitable organization created with a view to take over the obligations of the trust or any other charitable trust having the same or similar or substantially the same or similar objectives.
- 3.16. To set up, own, hire for profit & not for profit companies and operate them. To do all such other things as are incidental or conducive to the attainment of the above objectives;
- 3.17. To establish, support or aid in the establishment and support of any charitable associations or institutions and to subscribe or guarantee money for any purpose in any way connected with the purposes of the organization or calculated to further its objects;
- 3.18. To promote companies and firms for providing health-insurance facilities and other social welfare activities to the peoples of Bangladesh and incorporate health insurance companies;
- 3.19. To carry out all charitable activities for well being of mankind and society.

4.0. POWERS AND FUNTIONS OF TRUSTEES :

The Trustees will have wide powers and jurisdictions in order to manager, control run and carry out the objectives and functions of this Trust for the benefit of the beneficiaries in good faith applying their utmost sincerity, honesty and dedication including the following—

- 4.1. To receive fund from the Settlers time to time and also to receive and accept funds, contribution and donations, in cash or in kind, from any person, institution, organization, agency or Government, either national or foreign, unless the same is barred by law or prohibited by the Government of Bangladesh, to be used for the purposes and objects of trust, subject to such conditions as may be contained in the instruments of such donation, unless such conditions are subversive to the interests of the people of Bangladesh and/or contrary to the spirit of this Trust;
- 4.2. To invest and deal with fund, asset, money and property of the Trust for carrying out the objectives under this Trust;
- 4.3. To open Bank accounts, borrow and raise resources for the Trust with or without any securities;
- 4.4. To open account with any bank or banks (both home and abroad), to operate such account and to give instructions to the bank(s) and to provide for opening and operation of such accounts by one or more of the Trustees or any agent appointed by the trustees;
- 4.5. To draw, accept, make, endorse, discount and deposit Government and other promissory notes, bills of exchange, cheques or other negotiable instruments, and to receive fund, grant, donation or gift from any domestic or international or foreign or joint venture institution, organization, body corporate, company, legal entity, NGO or any person having good intention to develop the fund of this Trust and to carry out the objectives setting out under this trust Deed;
- 4.6. To create reserve fund, sinking fund, insurance fund, or any other special funds, whether for the depreciation, repairs, improvement, extension or maintenance of any of the properties or rights of trust and/or to recouping wasting assets and for any other purposes for which Trust deems it expedient or proper to create or maintain any such fund or funds;
- 4.7. To purchase, hire, lease, exchange or otherwise acquire property moveable and immovable including land, tangible or intangible (including copyrights, patents and intellectual properties) which may be necessary or convenient for the purpose of the Trust and construct, altar and/or maintain such building and works as may be necessary for carrying out the objects of the Trust.
- 4.8. To get involved with any kind of social business or profitable business with any natural or legal person or organization or NGO or international institute or research association or body corporate or any company for the benefit of this Trust and carrying out the objectives of this Trust.
- 4.9. To subscribe shares of companies for generating income to run and achieve the objects of the Trust;
- 4.10. To invest the money of the organization not immediately required for its purposes in or upon or such investments, securities or property as may be thought fit including establishing industry or business to generate fund or to assist the organization to any of its objects and there shall not be any limitation as the extent of investment by the Trustees;
- 4.11. To receive deposits of Trust moneys, securities and other personal property from any person or firm and to lead money on real personal securities in order to operate the organization properly;

- 4.12. To grant stipends to meritorious students for pursuing higher study and to get affiliated with academic and research institutions, both foreign and local and work jointly;
- 4.13. To help the Government and Non-Government Organizations of Bangladesh to create awareness activities for the help of the citizen;
- 4.14. To set-up educational institution such as; school, colleges, universities, technical and vocational institution for under privileged people of the society;
- 4.15. To receive donations, grants, contributions in cash or in kind from home and abroad, and from individuals or organizations, for the Trust itself in order to perform and implement the objects of the Trust or form any other organization, company under the control of the Trust;
- 4.16. To purchase, take on lease or in exchange, hire or otherwise acquire any movable or immovable property, any rights or privileges which the organization may think necessary or convenient for the promotion of its objects, and to construct, maintain and alter any building or structures necessary or convenient for the purposes of the organization;
- 4.17. To purchase, invest in and sell stocks, bills of exchange, bonds and mortgages, and other securities both of public and private companies or any other organization or corporate entity or the Government;
- 4.18. To establish, support or aid in the establishment and support of any charitable associations or institutions and to subscribe or guarantee money for any purposes in any way connected with the purposes of the organization or calculated to further its objects;
- 4.19. To adjust, settle, compromise, compound, refer to arbitration all actions, suits, claims, demands and proceedings regarding the Trust fund & property and in this regard take all such other necessary steps including but not limited to appointment and removal of lawyers, consultants, and other such qualified persons on such terms as the Trustees may deem fit and proper and to initiate or defend any suit or legal proceedings including arbitration touching upon matters relating to the Trust, its properties and funds;
- 4.20. To mortgage the properties of the Trust for the purpose of raising finance and to furnish collateral of any kind for the purpose of securing finance in order to achieve any of the objects of the Trust;
- 4.21. To appoint constituted Attorneys or Agents and to delegate such Attorneys or Agents all any of the powers vested in the Board of Trustees under these present and from time to time remove such Attorneys or Agents and to appoint other(s) in his or there place;
- 4.22. To expand net income of the Trust in such a manner as they consider most beneficial for the purpose of the Trust;
- 4.23. To invest such income or any grant, contribution, donations received by the Trust in profitable ventures, business or industrial undertaking and to direct sale or transpositions of or to vary any such investment and otherwise to capitalize such funds;
- 4.24. To enter into contracts, joint-venture, partnership or any lawful business on behalf of the Trust and to make such arrangements and draw up and put into effect such schemes as they may in their discretion deem fit for the administration of the Trust;
- 4.25. To take all necessary steps for the implementation of any of the objects of the Trust and to use/dispose of the fund of Trust for the attainment of the objectives of this Trust in good faith with utmost sincerity and loyalty.

5.0: GENERAL CONSTRUCTION AND BOARD :

- 5.1. It is declared that the objects specified above in each paragraph shall in no way be limited or restricted by reference to any other paragraph and each objects and functions shall be treated as an independent object and power.
- 5.2. The Trustees shall have the power to add, alter and/or modify the objects of the Trust so long as it is done in good faith for the benefit of the Trust and its beneficiaries.
- 5.3. The Trustees may also make, vary, alter or modify schemes, rules and regulations to carry out objects of the Trust and for the management of the affairs thereof and run any institution in furtherance of the objects of the Trust and otherwise for giving effect to the objects of the Trust.
- 5.4. The Board of Trustees shall hold at least 2 (two) regular meetings in every year and the meeting shall be called by notice under the signature of the Chief Executive officer or the Chairman and Managing Trustees or any other member in consultation with Chairman and Managing Trustees.
- 5.5. The Board of Trustees shall have the power to increase or decrease the numbers of the Trustees in the Board of Trust by taking resolution in the Board Meeting held by simple majority.
- 5.6. There are now 7 (seven) Trustees in the Board of Trust who will be treated as the first Board of Trust constituted under this Deed. The existing Board of Trustee can increase or decrease the numbers of the Trustees in the Board in the manner as stated above.
- 5.7. The first Board of Trustees shall construe in the following manner—

Name, addresses and tenure of first Board of Trustees

SL	Name	Address	Designation
1			Chairman and Managing Trustee
2			Member
3.			Member
4.			Member
5.			Member
6.			Member
7.			Member

6.0. MANAGEMENT OF THE TRUST :

- 6.1. All decisions/resolutions taken by the Board of Trustees will require simple majority except where specifically provided otherwise in this Deed. For the effective and better regulation of the Trust, the Board of Trustees can take any decision including increase or decrease of the numbers of the Trustees in the Board.
- 6.2. Each Board of Trustees shall have one vote. All questions at meetings of the Board of Trustees shall be determined by a vote of Trustees present, provided that in case of equality of votes, the Chairman shall have a casting vote.
- 6.3. For alteration, modification, amendment and necessary insertion/inclusion in the Trust Deed shall require simple majority of the Board of Trustees.

- 6.4. The Trustees shall have for a period of five (5) years, provided that they shall be eligible for re-election / re-nomination for further additional terms. The Chairman and Managing Trustee shall serve for a term of five (5) years, provided that s/he shall be eligible for re-election for further additional terms.
- 6.5. The First Board of Trustees shall have different tenure ranging from one (1) year to five (5) years time period. On completion of first term all members of the Trust shall be eligible for re-election/nomination for further periods.
- 6.6. The Board of Trustees shall nominate a Vice Chairman. S/he shall serve for a period of five (5) years and shall be eligible for re-election/re-nomination.
- 6.7. Member of the Board of Trustees shall be terminated/eliminated on the occurrence of any of the following events :
 - (a) Board of Trustees in its meeting by a 2/3rd majority, decide to terminate the membership of any trustees by giving 30 (thirty) days notice in writing.
 - (b) On the member's death, resignation, insolvency, lunacy or conviction for criminal offence.
 - (c) If a vacancy occurs, such vacancy shall be filled in like manner to the original vacancy and the person filling such vacancy shall remain a member of the Trustee for the unexpired portion of the period and such member shall be eligible for fresh membership.
 - (d) When a member desires to resign from his membership of the Trustee s/he shall forward his letter of resignation to the Chairman and Managing Trustee of the Trust and such resignation shall take effect only from the date of its acceptance by the Chairman and Managing Trustee.
 - (e) Any Trustee acting against the interest and spirit of this Trust can be terminated by the resolution of the Board of Trustee passed with 2/3rd majority of the Board Members.
- 6.8. The Board of Trustees shall, at all times, have at least 3 (three) Members.
- 6.9. That the Board of Trustees may appoint or make provision for appointment of sub-committees of Trustees or other persons under their control for management and running of each establishment and project(s) of the Trust or to attend or supervise or conduct specified jobs or function of the Trust matters in such manner and subject to such rules and regulations as the Trustees may prescribe reserving the power of revocation of any such delegation of power.
- 6.10. Trustees will meet as frequently as desired but not less than once a year to consider the agenda as may be determined by the Member-Secretary of the Trust. At the first meeting of the Board of Trustee the Chairman of the Trust shall nominate a person to act as member-Secretary of the Board of Trust who will be responsible to the Board of Trustee for his activities and conduct. The Board of Trustees shall have the authority to determine remuneration of the Trustees for attending meetings from time to time.
- 6.11. That the cash money, property and assets of the Trust shall vest in the Trustees and shall be applied to all or any of the objects of the Trust as the Trustees may determine.

- 6.12. Notwithstanding anything contained in any other clauses of this deed of Trust, the Chairman and Trustee shall have the powers and authority to do all lawful things and take all measures as may be necessary or expedient for purposes of administering, preserving and managing the properties of the Trust and for carrying out the objects of the Trust and for putting into effective operation of the provisions of this Deed and the decision on any such matter shall be final.

7.0. DUTY OF THE TRUSTEES :

The Trustees shall have all the duties and responsibilities to carry out and implement the objectives/purposes of this Trust including the following—

- 7.1. To ensure that true and accurate accounts of all money received and spent are maintained.
- 7.1. That Accounts are maintained for all matters pertaining to the management of Trust properties or in relation to the carrying out of the objectives and purposes of the Trust as well as of the assets, credits and effects of the Trust properties.
- 7.3. To cause to be kept true and accurate of all monies received and spent and of all matters in respect thereof in course of management of Trust properties or in relation to carrying out of the objects and purposes of the Trust as well as of the assets credits and effects of the Trust properties.
- 7.4. To cause to be kept and maintained for every financial year books of account showing all receipts and disbursements made on account of the Trust and to have the same duly audited by a Chartered accountant once in a financial year.
- 7.5. To take measures to put into effect the provisions herein appearing for the fulfillment and prosecution of the objects of the Trust.
- 7.6. To maintain and preserve records relating to the affairs of the Trust and to ensure the safe custody of all deeds and documents of titles pertaining to the Trust and its properties and assets and also to do such things as the Board of Trustees may deem fit and proper.
- 7.7. To maintain secrecy, transparency, accountability and loyal in terms of dealing with Fund of the Trust.

8.0. ACCOUNTS AND AUDITS:

- 8.1. The Board of Trustee shall cause to be kept proper books of accounts with respect to—
 - (a) all contribution/donation/grant received from Settlor and the matters in respect of which the receipts and expenditure incurred thereon.
 - (b) books of accounts to be kept against income/earnings from investments for the time being made & the expenditure incurred thereon.
 - (c) the assets and liabilities of the Trust.
- 8.2. The books of account shall be kept at the registered office of the Trust or at such other place as the Board of Trust shall think fit and shall be open to inspection by the members of the Board during business hours.
- 8.3. A complete set of accounts and financial reporting shall be made/prepared in every calendar year and laid before the Trust Board Meeting for its due approval.

- 8.4. Audits of accounts shall be made at the end each year to conduct/carry out audit for necessary verification & examination of accounts with a view to evaluate the overall adequacy of the presentation of information in the forgoing financial statements.
- 8.5. Trustee shall appoint an auditor or auditors who must be qualified chartered accountants.
- 8.6. All the financial transactions, documents or statements including operation of bank account, signing cheque, bill, bond or any financial affairs will be operated and held by the single signature of either M as long as they are in the Board of Trustee. After their termination/expiry, the aforesaid financial part of this Trust will be operated and held by anyone severally or jointly as the simple majority of the Board of Trustees will decide by taking Board Resolution.

9.0. OTHER CONDITIONS OF TRUST :

- 9.1. The Trustees may reimburse themselves and pay any discharge out of the Trust Fund for all expenses incurred personally by them in the course of execution of the Trust or any of their duties under these presents including travelling expenses and any other expenses.
- 9.2. The Chairman and Managing Trustee himself can hold the position of Chief Executive Officer with approval of Board of Trustees or the Board of Trustees may appoint Chief Executive Officer. The Chief Executive Officer may appoint Operating Officer, Executive Director, Director General, Directors, Administrator, Doctors Consultants, Secretaries, Managers, Executives, Lawyers, Solicitors, Auditors, Publisher, Architects, Engineers, Surveyors or other employees for the purpose of management and supervision of the Trust estate on such remuneration and terms of service as they may reasonably determine. The Board of Trustee can also appoint Honorary Trustee on Independent Trustee. Anyone willing to take part in this Trust can be a donor member of this Trust with the approval of the Board.
- 9.3. Every power, authority or discretion vesting in the Trustees for carrying out the provisions of this deed shall be exercised (and signified in writing) by resolution of Board of Trustees in a meeting as herein provided.
- 9.4. Three members of the Board of Trustees including the Chairman shall form a quorum for any meeting of the Trustees. A Trustee who is unable to be present at a meeting of the Trustees may send his views in the agenda in writing and such expression of opinion shall be taken to be his vote on the matter concerned. The meeting of the Board of Trustees may be held through tele-communication, video conference or any other method of communication which may not necessitate presence of Trustees at once place. A resolution in writing signed by all the Trustees entitled to vote thereon being not less in number than a quorum for meeting of the Trustees shall be as valid and effectual as a resolution duly passed at a meeting of the Trustees and may consist of several documents in the like form each signed by one or more Trustees.
- 9.5. That the Trust shall have an official seal after its name. The Trustees shall use the official seal in all official activities, including opening bank accounts, contracts and other documents.
- 9.6. If the income from the Trust property in a particular year is not fully utilized, the remaining balance will be transferred to a Reserve Fund and shall be carried over to the next year or years and spent in subsequent years for the advancement of any of the objects of the Trust.

- 9.7. The Board of Trustees may make rules consistent with the spirit of this Deed including its own procedure for the transaction of its business.
- 9.8. In particular and without prejudice to the generality of the forgoing powers such Rules as stated above may provide for all or any of the following matters, namely:
 - (a) Appointment of Management Committee for Administration of Trust, Assignment of functions and delegation of powers to such bodies and determinations of conditions on which such bodies shall be constituted and function.
 - (b) Conduct of business in meetings and regulation of proceedings and matters pertaining thereto including notice of meetings, duration of notice and mode of effecting service of notice.
- 9.9. The Board of Trustees will delegate the power and authority to such person/persons for opening and operating the bank accounts of the Trust.
- 9.10. If this Deed of Trust does not provide any matter, which in the opinion of the Trustees, is essential for smooth performance of their functions as trustees or if this Deed of Trust makes a provision which is insufficient or ambiguous or which is inconsistent with some other provisions thereof, or any law, then the working difficulty arising from such omission, ambiguity or inconsistency if any, may be resolved by the Chairman and Managing Trustee with the concurrence full Board of Trustees.
- 9.11. If upon winding up or dissolution of the Trust there shall remain, after satisfaction of all its debts and liabilities, any property whatsoever the same shall not be paid or distributed among the Trustees but shall be given to some other association or society or organization or institution having similar objects of charitable purpose as may be determined by votes of not less than two-third of the Trustees present personally at the time of dissolution or in default by such court having competent jurisdiction over such matter.
- 9.12. That this Deed of Trust is revocable in such manner as may be permitted under the laws of Bangladesh.
- 9.13. This Trust and the Trust Deed shall be governed by the laws of Bangladesh.
- 9.14. The Board of Trustees with the simple majority can amend the provisions of this Deed for the benefit of the trust.

IN WITNESS WHEREOF the settlor and the Trustees having clearly and fully understood the contents of this Deed of Trust, in their full sense and have signed this it on the date first above mentioned.

Signed & Delivered by the Settlers

(M)
Chairman
..... Ltd.

Signed & Delivered by the Trustees

SL	Name	Address	Designation	Signature
1			Chairman and Managing Trustee	
2			Member	
3.			Member	
4.			Member	
5.			Member	
6.			Member	
7.			Member	

This Deed of Trust is made in total 18 (eighteen) pages in the presence of following witnesses.

Witnesses :

1.Parents Names, address.....age.....
2.Parents Names, address.....age.....
3.Parents Names, address.....age.....
4.Parents Names, address.....age.....

Drafted By :

(.....)
Advocate, Supreme Court of
Bangladesh.

Sample

DEED OF COMPROMISE

Date : 25 October 2016.

This Deed of Compromise is executed on 25.10.2016 between the following parties.

BETWEEN

Mrs., wife of Late Mr., address,..... please write the name and designation of your new company age about 42, by Faith- Muslim, by occupation-Business, a Bangladeshi citizen having National ID No., henceforth referred to as the First Party.

....**First Party.**

AND

(i) Limited, represented by Mr., Managing Director, House No. 130,, Dhaka-1206, (ii) Limited, represented by Mr., Managing Director, House No. 130,, Dhaka-1206, (henceforth referred to as the 'Company'), a Bangladeshi citizen (jointly referred to as the Second parties) henceforth referred to as the Second Parties.

.... **Second Parties.**

(The aforesaid expressions of all the Partners shall mean and include their successor-in-interest, heirs, legal representatives, assigns and nominees unless otherwise expressly excluded by context.)

Whereas, once the First Party and her late husband were the shareholders-directors in the aforesaid Company;

Whereas, in last few years there were several problems and conflicts of interests arose between the First Party and the Second Parties, and the First Party and her late husband were compelled to leave the Company;

Whereas, both the parties are agreed to settle all their disputes in the following manner by executing this Deed of Compromise;

Under the aforesaid circumstances, the parties are executing this Deed of Compromise in the following terms and conditions—

1. The First Party will negotiate with the Second Parties regarding all disputes between them.
2. By executing this Agreement, both parties are confirming the termination of Memorandum of Understanding (MOU) dated 24.12.2015 executed between them. Therefore, the terms and conditions of that will not be binding anymore upon the parties. The First Party will be free to do any business with the Principals (suppliers of the animal health care products) and the Second Parties will not create any problem or cause hindrance thereof.
3. The Second Parties will communicate with the Principals (Fatro SPA Italy) of the First Party conveying them that the Second Parties will have no problem if the Principals will do business with the First Party in any name and brand, and in doing so the Second Party will not communicate for any business with Fatro SPA Italy.
4. The Second Parties will convey a message to (Fatro SPA Italy) regarding the following products that the Principal of the following products will be free to continue/do business with the First Party in any name and brand. In addition to, the Second party must have to send the original registration certificates (mentioned below) to Fatro SPA Italy.

SL No.	Product Name	Registration No.
1.	BIO-MAREK HVT Vaccine (Freez-dried HVT-126 strain of turkey herpes virus)	306-4038(v)-05
2.	BIO-VAC LS-H 120 Vaccine (Freez-dried live attenuated LaSota strain of Newcastle disease virus + Freez-dried live attenuated Massachusetts H 120 strain of Avian Infections Bronchitis virus)	306-4040(v)-05
3.	BIO-VAC LASOTA Vaccine (Newcastle disease virus strain LaSota)	306-4041(v)-05

5. The First Party will have no problem when Second Parties have executed the condition in clause 2, 3 and 4 and then if they get released/acquitted in thePolice Station Case No.

14 dated 6.08.2016 filed by the First Party against the Second Parties under section 420/406/467/468/354/380 of Penal Code, 1860, which is now pending before the learned.....

6. The Second Party will arrange and provide NOC in favor of the First Party from drugs authority Bangladesh which should enlighten the transfer of the distributorship of Fatro SPA Italy from the Second Party to the First Party.
7. The First Party will have no objection if the Second Parties use this Agreement in order to prompt disposing off the aforesaid case.
8. The Second Parties will not file any case/suit or cause any problem in the way of the First Party who will be at liberty to do business independently with anyone inside and outside Bangladesh.
9. The First Party will not create any obstruction in the way of the Second Parties who will be also free to do any business with anyone except the aforesaid Principal (Namely Fatro SPA Italy).
10. The Second Parties will act and carrying out all functions in compliance with this Deed within 30 (Thirty) days of this Deed.
11. The aforesaid parties are executing this Deed in their free will, voluntarily, without any persuasion, fraud, coercion or misrepresentation.
12. This Deed shall be enforceable in any court of law, arbitrator or any other appropriate authority in Bangladesh.
13. Both the parties will be bound by this Deed of Compromise and will not act in a way which may directly or indirectly contrary, prejudicial, violative or contravening to this Deed.
14. This Deed and all of the provisions hereof will be binding upon the parties hereto and their respective heirs, successors-in-interest and permitted assigns.
15. Regarding the present subject-matter of their Deed, the Second parties shall have no further right/claim/interest against the First party.
16. This Deed of Compromise is executed in 2 (two) sets, each of Tk. 500/- (taka five hundred) only.

IN WITNESS WHEREOF, THE PARTIES HERETO SIGN THIS AGREEMENT ON THE DAY, MONTH AND YEAR MENTIONED ABOVE.

Signature of the First Party

: Signature of the Second Parties

Mrs.

1. _____

In witness of :

1. Name:

Age:

Address:

Advocate for the First Party

2. Name:

Age:

Address:

Advocate for the Second Parties

Signature of the Advocate

Sample

DEED OF PARTNERSHIP

This Deed of Partnership executed on the 21 May of 2017 Christian era.

BETWEEN

Md. Mizanur Rahman, Son of Md. Bazlur Rahman and Monowara Begum, of House No. 39 Ulan, Ulan, Post Office- Khilgaon-1219, Khilgaon, Dhaka, date of Birth: 02.09.1982, by citizenship- Bangladeshi having National ID: 2693622412235, religion- Muslim, hereinafter referred to as the **Partner**.

Photo

..... **PARTNER NO. 1**

AND

Subir Das, son of Sawpon Das and Monisha Das, address of House No. Saha Bhaban, Road No. Uttara Hospital Road 1st Gali, Uttara Hospital Road, Post Office- Barisal-8200, Barisal Sadar (Kotwali), Barisal City Corporation, Barisal, date of Birth: 01 January, 1988, by citizenship- Bangladeshi having National ID 0695119232425 by religion- Hindu, hereinafter referred to as the **Partner**.

Photo

..... **PARTNER NO. 2**

(The aforesaid expressions of all the Partners shall mean and include their successor-in-interest, heirs, legal representatives, assigns and nominees unless otherwise expressly excluded by context.)

WHEREAS, all the aforesaid Parties are interested in setting up a Advertising, Communications and Branding Firm together under the name and style ***“FlowRêve Communications (Draw your Dreams with us)”***;

AND WHEREAS, all the aforesaid parties are friends and they have good understanding;

AND WHEREAS, all the aforesaid parties have already set up their Chamber together at Rose View Plaza Ltd., 10th Floor, Suite No: 101, of 188, Bir-Uttom, C.R. Dotto Road, Hatirpool, Newmarket, Dhaka - 1205;

AND WHEREAS, all the aforesaid parties jointly conducting the aforesaid advertising, communications and Branding and to do any other lawful business for a long time basis on their mutual understanding, faith and co-operation;

AND WHEREAS, being satisfied and believe with the performance, accountability and assiduousness to each other work all the said parties are eagerly intend to execute this Deed of Partnership;

AND WHEREAS, capital, physical assistance, technical skills and know-how are required to establish this new partnership in order to effect the mutual benefits of all the executing parties and all the said parties mutually agree to contribute in this act of partnership according to their capabilities depending on mutual understanding, negotiation, faith and co-operation time to time;

AND WHEREAS, all the parties hereto mutually have agreed to form a partnership to enter in the Advertising, Communications and Branding and to do any other lawful business in share specified herein below and have agreed to the same on certain terms and conditions set forth below;

AND WHEREAS, it is necessary to reduce in writing the terms and conditions which are agreed upon;

NOW THIS AGREEMENT OF PARTNERSHIP WITNESS AS FOLLOWS:

1. That all of the above noted two hereby become and will continue as partners together in the business relating to Advertising, Communications and Branding and any other lawful business. Partner no. 1 will be the Managing Partner and he will be in-charge in maintaining the finance and other matters of this Firm. He shall be accountable, transparent and disclosure to all other partners. In case of taking any relevant decision under this Partnership, the opinion of all the partners shall be equally valued.
2. That the Partnership shall commence from the date of incorporation of this deed and shall be a Partnership at will. The partners shall be sincere, accountable and transparent to each other and shall endeavor to keep the reputation and fame of this partnership secured and growing.
3. That by name and operation this partnership shall be named after ***“FlowRêve Communications (Draw your Dreams with us)”***. The main address of this partnership firm shall be the address of Rose View Plaza Ltd., 10th Floor, Suite No: 1101, 185, Bir-Uttom, C.R. Dotto Road, Hatirpool, Newmarket, Dhaka – 1205 and there shall be other branches of this firm in any other place of this country.
4. That the Advertising, Communications and Branding and to do any other lawful business shall be carried on under the name, address and style of the same as specified before or in such other place of the relevant field as they, the said parties shall from time to time mutually agree upon. The partners will carry out the good-will, logo, pad, visiting card, brand name and other facilities of the law firm.
5. That the initial paid up capital of this deed shall of 1 (one) lac taka. That at the end of financial period or at earlier interim periods accounts will be prepared and the profit and loss accounts and the balance sheet will be signed by all the partners in taken of correctness and the profit and loss so ascertained will be distributed **EQUALLY**.
6. That the initial capital of the said Partnership Advertising, Communications and Branding and to do any other lawful business at the commencement of this Partnership shall only be contributed equally all the partners.

Provided further that incase of dissolution of this Partnership the partners will be entitled to share according to their respective interest (as stated earlier) in the surplus. If any, if there is no surplus then the partners will bear the loss according to their respective interest.

7. That the bank account and all other financial affairs/documents/transactions of this Firm will be managed by the joint signatures of the following partners—
 1. **Md. Mizanur Rahman**
 2. **Subir Das**All the financial papers/documents including cheques, bills, bonds, financial statements, etc will be signed by the above mentioned partners.
8. No partner can conduct private/personal cases and handle clients privately in the name of this Partnership. As the Firm constituted under this partnership will have public announcement through websites, distinctive pad, card, office and other papers, so any client coming to get law service from this Law Firm cannot be dealt with/handled by any of the Partners personally/privately in secret. If anyone breaches any terms and conditions of this partnership, his interest/partnership will be seized.
Provided that: besides this partnership, the aforesaid parties shall have the right to conduct individual cases/suits and to provide individual law services to the clients.
9. That this “Partnership Deed” shall be conducted and ruled by the laws of this country.
10. That almost all the financial, law service decisions, documents, trading and other relevant and incidental things in connection with this “Partnership Firm” shall be operated by the mutual co-operation of the partners of this deed.
11. That if any partner wants to rescind this partnership deed, then he needs to give written notice before 3 (three) months. The other partner shall enjoy pre-emptive rights in purchasing those shares or portion of the rescinding partners. If another partners individually or jointly want to purchase that portion then he/they must inform to the rescinding partners of their answer within 1 (one) month from the day of receipt of the said notice.
12. That the partners are mutually free to add new partner in this partnership firm with certain conditions.
13. That the staff and other employees of the partnership firm will be appointed by the partners.
14. That the partners may have personal drawing which will be reflected in their respective personal ledger account of the books of the firm.
15. That each partner shall be just and faithful to the partners in all transactions relating to the Partnership law service at all times and to give each other a true account of the dealings.
16. Each partner shall carry on the law service to the best interest of the Partnership.
17. That every partner will be entitled to represent the firm to relevant office clause and other commercial concern.
18. That incase of death or insanity of any partners of this Partnership the legal heirs of each partner will be inducted in the said Partnership in place of the deceased or insane partners but this is subject to the mutual approval of other partners of the Firm.
19. That death of partner shall not operate as dissolution of the partnership. In such cases the successor will get the share of the deceased with adjusted capital.
20. That any difference arising between the partners touching the partnership shall be referred to the arbitration by and arbitrator to be nominated by each partner and the award given by the said arbitrator.

21. That more partners may be included in this Partnership by the mutual consent of the partners if it is thought expedient and necessary.
22. That after the death of any partners, her legal heir shall be entitled to be a partner of this firm if he/she desires.
23. That at the dissolution of this partnership the liability and interests and assets of this partnership shall be primarily apportioned according to the aforesaid manners as described in condition no. 5 of this deed.
24. That incase of voluntary winding up of the firm, the partners are jointly entitled and empowered to dispose of the entire firm along goodwill, assets and liabilities to the third party.
25. That the terms contained in this Agreement Partnership may be varied for the best interest of the partners in according to the consent of these partners may either be empowered in writing of may be implied from conducts.
26. That in case of necessity the partners are free to make any necessary amendment and supplementary or complementary oh this deed.
27. No Partner will do anything which causes reputation or financial loss to each other. No partner will hide anything which is prejudicial to the common interest of this firm. Each partner will be full disclosure, accountable and endeavor to uphold their in-between trust and confidence for the benefit of this partnership.
28. That for settlement of any sort of dispute the partners shall prefer the forum of arbitration, mediation or reconciliation as their first aid.
29. That all matters other than those matters not provided for in this presents and for interpretation of any of the terms noted herein, provision of the Partnership Act will apply.

IN WITNESS WHEREOF, the partners here to set and subscribe their respective hands and seals this day of the month and the year above written.

SIGNATURE OF THE WITNESSES

1.

2.

3.

SIGNATURE OF THE PARTNERS

1.

(Partner No. 1)

2.

(Partner No. 2)

Sample

MEMORANDUM OF UNDERSTANDING (MOU)

Executed on

This Memorandum of Understanding (*henceforth referred to as 'MOU'*) is executed on (*..... in the Christian Era*), which will come into effect on the date of its execution between the following parties.

BETWEEN

Farid Ahmed Bhuiyan, son of Al-Haj Mofiz Uddin Ahmed Bhuiyan, of House # 810, Road # 4, Baitul Aman Housing Society, Adabor, Mohammedpur, Dhaka-1207, a Bangladeshi National having National ID No. 511651906151, henceforth referred to as the **Landlord/First Party**.

.....**Landlord/First Party**

AND

Escorp Apparels Limited, a limited company incorporated under the laws of Bangladesh having its corporate office at represented by its For the purpose of signing and executing this MOU this company has authorized itsManager, henceforth referred to as the **Tenant/Second Party**.

.....**Purchaser/Second Party**.

(The aforesaid expressions of all the parties shall mean and include their successor-in-interest, heirs, legal representatives, assigns and nominees unless otherwise expressly excluded by context.)

Whereas, the First Party is the absolute owner and possessor of the land and premises as described under the Schedule of this MOU below (*henceforth referred to as 'schedule premises'*), and he wants to rent out the schedule premises on monthly rent;

And whereas, the Second Party wants to take the schedule premises on monthly rent for the purpose of setting-up business thereof i.e. a show-room of the Second Party which will be known as “White by Tisco”;

And whereas, the First Party will remain as the Landlord and the Second Party will enjoy the absolute possession as Tenant in the schedule premises;

Whereas, in order to accelerate the aforesaid purpose, both the parties are hereby primarily agreed to execute a Memorandum of Understanding (MOU) on this date under the terms and conditions as set-out in this MOU;

Therefore, both the aforesaid parties are agreed to execute this MOU to give effect the aforesaid objectives under the following terms and conditions—

1. That the First Party will remain as the Landlord and the Second Party will enjoy the absolute possession as Tenant in the schedule premises.
2. That both the parties agreed to execute this MOU as a pre-negotiation before execution of the final Lease Agreement for renting out the schedule premises on monthly rent basis, primarily for a period of ten (10) years.
3. That as an advance pay the Second Party will pay Tk.to the First Party. Out of said advance pay, Tk.will be paid by the Second Party to the First Party at the time of execution of this MOU and rest Tk.will be paid at the time of execution of the Lease Agreement.
4. That the monthly rent will be Tk., which can be reviewed at the time of execution of the Lease Agreement. Provisions detailing the monthly rent, square feet price and other things will be stated and settled in the Lease Agreement.
5. That basing on this MOU a Lease Agreement will be executed between the parties at the time of delivery of possession of the schedule premises by the First Party to the Second Party.
6. That the First Party shall deliver the absolutely peaceful, un-encumbering and exclusive possession of the schedule premises to the Second Party onThe First Party will assure that there is pending litigation, loan issue defaulting issue or 3rd party claim over the schedule premises.
7. That the First Party will ensure the Second Party that the schedule premises have all necessary permissions from the Government Authorities in accordance with law and the schedule premises is commercially useable.
8. That the First Party is assuring that he is the only owner of the schedule premises and there is no pending claims/interest of any other party over the schedule premises.
7. That the First Party is further assuring that the schedule premises are not subject to any suit, pending litigation, mortgage, hypothecation, charge, claim of any government authority and/or any other liabilities.
8. That if there is any pending claim, charge or problem over the schedule premises before execution of this MOU, the First Party will mitigate/solve those issues at its/his own cost, liability and responsibility, and the Second Party shall not incur/carry out any responsibility thereof. If in any circumstances subsequent to this MOU the Second Party would need to incur any expense/cost for solving or mitigating any problem arising out of any claim, charge, problem or encumbrance over the schedule properties, the First Party will deduct that amount (expense/cost) out of the said outstanding amount of the First Party.
9. That this Agreement will be valid only formonths or till execution of the Lease, whichever is earlier.
10. That in default of delivering the peaceful possession of the schedule premises by the First Party to the Second Party in time, the Second Party may wait further 60 (sixty) days for delivery of possession by the First Party. In such case, the Second Party may not claim any compensation; but in case of any further delay i.e. any delay continues beyond said 60 (sixty) days, the First Party shall be liable to pay compensation @ 8% per month of the monthly rent amount to the Second Party .

11. That in case of delay in delivering the peaceful possession of the schedule premises by the First Party to the Second Party; the Second Party shall have the right to terminate this Agreement. [We need to know whether after expiry of the period of this MOU, will it be auto terminated.....or you need to serve notice].
12. That this MOU can be terminated by the parties giving 45 (forty five) days prior written notice to the other side.
13. That in case of failure to execute the Lease Agreement or give effect of the purposes of the Agreement arising out of the fault, negligence or performance of the First Party; the First Party will return the said Advance Pay money Tk.within 8% interest to the Second Party per month within 30 (Thirty) days of such occasion of failure occurs.
14. That in case of failure to execute the Lease Agreement or give effect of the purposes of the Agreement arising out of the fault, negligence or performance of the Second Party; the First Party will return the said Advance Pay money Tk. to the Second Party per month within 30 (Thirty) days of such occasion of failure occurs after deducting the one-third ($\frac{1}{3}^{\text{rd}}$) of the Advance Pay.
15. That the period of this MOU may be extendable upon mutual negotiation of the parties in witting.
16. That any problem arising out of this MOU will be solved through mutual negotiation between the parties.
17. That this Agreement and all of the provisions hereof will be binding upon the parties hereto and their respective heirs, successors-in-interest and permitted assigns.
18. This agreement has been made in original 2 (two) sets stamp in Tk. 500/- and printed in (.....) pages.

Schedule Premises

Premises measuring total which is the Ground and 1st Floor situated at building namely, NAVANA PRISTINE PAVILION, Developer's Name: NAVANA Real Estate Limited, Gulshan Avenue (opposite to Azad Masjid), Road No,, District- Dhaka, along with Car parking Space measuring.....

IN WITNESS WHEREOF, THE PARTIES HERETO SIGN THIS AGENCY AGREEMENT ON THE DAY, MONTH AND YEAR MENTIONED ABOVE.

Signature of the First Party	: Signature of the Second Party (.....)
--	--

In witness of :

- 1.
- 2.

Sample**JOINT VENTURE AGREEMENT**

THIS JOINT VENTURE AGREEMENT (“Agreement” or “JVA”) is made on 4th September 2018 (hereinafter the “Effective Date”) by and between :

GENERIC PHARMACEUTICALS LIMITED, a private limited company, incorporated under the Companies Act (Bangladesh) 1994, and having its registered office and corporate headquarter situated at Salim Tower, 39 Ring Road, Holding # 7/1, Shyamoli, Adabor, Dhaka-1207, Bangladesh, Website: www.genericpharma.com, known as FIRST PARTY.

AND

SIMPLE LABORATORIES LIMITED, a private limited company duly registered under the Indian Companies Act 2013 and having its registered office a Unit 8I Plot no: 76, IDA, Jeedimetla, Hyderabad-500055, Telangana, India, Website: www.simplelabs.com, known as SECOND PARTY.

Recitals

WHEREAS, GENERIC Pharmaceuticals Limited (GPL) is the fast growing pharmaceuticals company in Bangladesh with its wide range of dosages products are serving with many therapeutic categories. GPL is going to expand its business entity for manufacturing of APIs in new dedicated facilities at API Industrial Park at Gazaria, Munshigonj, Bangladesh;

WHEREAS, Simple Laboratories Ltd (SLL) is a sister concern of LNDG group is engaged in manufacturing of Active Pharmaceutical Ingredients, API Intermediates;

WHEREAS, GPL and SLL are in the process of developing a business plan for setting up the manufacturing facilities of Active Pharmaceutical Ingredients (API) and operating the Company named as SIMPLE GENERIC PHARMA (Bangladesh) Limited to undertake the business purpose for introducing the most advanced equipment and technology, to manufacture the products of the highest international standards. The aim is to become Bangladeshi leading manufacturer of APIs based on a comprehensive R&D program;

NOW, THEREFORE, in consideration of the foregoing, and of the mutual agreements and commitments set forth herein, the parties hereby agree as follows:

Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the meanings set out against them:

‘Act’ means the Companies Act of the respective country and all future modifications, amendments and substituting Acts.

‘Agreement’ means this Joint Venture Agreement and all modifications, attachments and schedules to this Agreement.

‘Business Purpose’ has the meaning specified in Article 1.1 below.

‘Board’ shall mean the Board of Directors of the Company.

‘Company’ or ‘JVC’ means the joint venture company to be incorporated by the Parties as a private limited company.

‘Effective Date’ of this Agreement will be the date when this Agreement is signed by the Parties with the understanding.

‘Technology’ includes route of synthesis, manufacturing process, quality specifications, various physical and chemical data, analytical and test methods, compositions, formulations, the stability data etc.

‘Design’ includes process & detail engineering, layout of R&D-Pilot -Commercial plant, Plumbing and P & I drawing, architectural Civil and structural design, utility demand, Electrical Load, Effluent Load, Solvent Load & solvent recovery management etc.

‘Terms and conditions’ specified in Article-3

“Intellectual Property” shall mean inventions, designs, knowhow and technical information and confidential information of whatever nature and copyright works

‘Formation’- to be done from Registrar of Joint Stock Companies (RJSC), Bangladesh after signing of this Agreement. The joint venture formed by this Agreement (the “Joint Venture”) will conduct its business under the name [SIMPLE GENERIC PHARMA (BANGLADESH) LTD.], and will have its registered address at [Salim Tower, 39 Ring Road, Holding # 7/1, Shyamoli, Adabor, Dhaka-1207, Bangladesh]. After getting, name clearance certificate, memorandum of association and articles of association to be prepared.

Article-1: Purpose of Agreement

1.1. The Joint Venture will be formed for the purpose of providing a description of the products and/or services that the Joint Venture is concerned with, and the objective/purpose of the Joint Venture. The Parties intend to incorporate the Company as a private limited company under the provisions of the Act in accordance with the terms and conditions of this Agreement.

The Company will be an independent business entity and self-reliant, capable of undertaking the following activities as shall be more fully set forth in the memorandum of association of the Company (hereinafter also referred to the “Business Purpose”).

- To set up the state-of-the-art API manufacturing facility in Bangladesh.
- To meet up local regulatory requirement as well to penetrate into global market.
- To adopt QbD (Quality by design) concept for maintaining high level quality standard.
- Requirements for the construction of the manufacturing facilities and set up equipment in accordance with ICH and/or FDA guidelines and standards.
- To manufacture the potential molecules that will be identified on mutual discussion.
- To introduce patent molecules exclusively to get waiver of TRIPS (Trade Related Aspects of Intellectual Property Rights) until 2033.

Each party will contribute the assets and resources herein specified.

1.2 The roles and responsibilities of the Parties in the Company are mentioned in summary form in ‘**Annexure- A**’ attached hereto and incorporated herein.

1.3 It is understood that equity contributions shall be made in such amounts and as per time frame mutually agreed and approved in writing by the Parties.

Article-2: Formation of the Company

2.1 Formation

The Company shall be formed under and governed by the Act and other applicable statutes/rules. The registered office of the Company shall be at Dhaka, Bangladesh. The cost of incorporation of the Company shall be borne by the parties in proportion of their of equity holdings. The proposed name of the Company shall be such name as is mutually agreed in writing by the Parties and approved by the Registrar of Joint Stock Companies (RJSC). The articles of association of the Company shall, as far as is permissible, incorporate relevant provisions of this Agreement including the rights attached to issue shares by the Company. The Name of the Joint Venture finally is subjected to the acceptance by the Registrar of Joint Stock Companies (RJSC) as proposed SIMPLE GENERIC PHARMA (BANGLADESH) LTD.

Article-3: Terms and conditions

Simple Laboratories Ltd (SLL) shall deliver to JV Company such proprietary technologies represented by the supporting patents, process of different molecules and know-how owned or controlled by it and reasonably necessary for the manufacturing of API molecules and shall during the term of this agreement, deliver such other proprietary technologies owned or controlled by SLL may be reasonably necessary to manufacture such other final products as JV may identify or provide research and development services. Proprietary technologies may include the Route of synthesis, manufacturing process, stability data, quality specifications, various physical and chemical data, analytical and test methods, compositions, detail engineering etc.

- 3.1 GPL and SLL have agreed to establish a joint venture company (JVC) to engage in the manufacturing and marketing of bulk drugs in Bangladesh and global market.
- 3.2 The JV company shall be funded through Equity participation by both parties and debt. The Equity participation shall be 30% and debt 70%.
- 3.3 The parties agreed upon on authorized share capital mutually in the following manner:
 - 3.3.1 GPL shall contribute to equity shares 50% of the paid up share capital of the company.
 - 3.3.2 SLL shall contribute to equity shares 50% of the paid up share capital of the company.
- 3.4 The initial equity investment of the JV company is estimated at BDTCrore which will be shared by the PARTIES equally.
- 3.5 The SECOND PARTY shall invest complying FDI rules by formation of registered JV company
- 3.6 All fixed assets like land and other expenditures have already incurred and to be continued shall be considered as expenses of JV Company.
- 3.7 Preliminary expenses for formation and Registration of the JV shall be expenses of the JV.
- 3.8 Bank account will be opened in the name of the JV and will be operated upon jointly by the nominees of both the PARTIES.
- 3.9

Article-4: Representations and Warranties

- 4.1 Each Party is a company duly incorporated and validly existing under applicable Laws with requisite power and authority to enter into and perform its obligations under this JVA.
- 4.2 No consents, approvals, registrations, authorizations or permits are required to be obtained by any Party for the execution and performance of its obligations under this JVA.
- 4.3 The execution of this JVA by each Party and performance of its obligations under this JVA, shall not breach the provisions of any law, decision of any authority/court or any conditions of any contract to which the said Party is a party or any other material obligation binding on it.
- 4.4 Each Party represents that it has not entered into any other agreement or executed any undertaking that would restrict or prevent the performance of its obligations under this JVA.
- 4.5 Litigation: Neither SLL nor GPL and or any affiliate or subsidiary is a party to any litigation that could materially impact a Party's performance under the JVA, or has been previously been a party, to any litigation, arbitration or other dispute resolutions process concerning any other joint venture agreement aside from this JVA which adversely impacts the operations and functioning of the JVA.
- 4.6 Each of the representations and warranties set out in this clause shall be deemed to be continually repeated throughout the term of this JVA. Should any such representations and warranties no longer be true and complete, the affected Party shall immediately notify the other Party in writing of any change of circumstance and shall take such steps as may be necessary to permit such representation and/or warranty to remain true and complete. Should the affected Parties be unable to take such steps within a reasonable period notified, the other Parties may terminate this JVA according to the provisions of this Agreement.
- 4.7 Should any of the above representations and warranties not be true and complete in all aspects when made, the Party making the representation and warranty shall defend and fully indemnify the other Party / Parties for any breach thereof.

Article-5: Management and operations

The main functional activities such as research & development, production, compliance, engineering, sales & distribution wings shall work under an umbrella and reporting of functional heads to the Plant Head. The top management body shall be appointed from First Party for liaising with different government agencies, locally endorse and stakeholders effectively. On mutual discussion, employees can be deputed or transferred to JV company from both parties depending on the necessity. The first party has good establishment on different wings like HR, IT, Finance and Accounts, Commercial can be extended their support to JV Company to reduce the span of management. If require, terms and conditions shall be set on mutual discussion.

5.1. Plant Head

A Plant Head will be responsible for reporting to the Managing Director of the First party and the Board of Directors shall determine the roles and responsibilities as well authority to be advised to the Plant head.

5.2. Functional Head

The others functional heads and officers to be appointed by the Company time to time based on the justification of the requirement. The justification shall be endorsed by the Board of Directors or Managing Directors of the First party. The recruitment to be deemed through standard selection procedure and HR of the first party shall circulate until the establishment of HR of the JV company. The roles and responsibility of the functional heads and officers shall be determined by the Plant Head and their reporting authority to be deemed to the Plant Head.

5.3. Operation of Company's Business

At all times the Company shall operate its business in accordance with any and all applicable laws and regulations including labor law, Department of environment, local drugs authority, GMP guidelines, ICH and others regulatory requirement for exporting products in regulatory markets but not limited to all applicable anti-bribery laws, rules, codes, orders, regulations, decrees, conventions and/or government orders of any relevant jurisdiction.

5.4 Maintenance of Records

All financial transactions to be preserved precisely and Managing Director of the First Party shall have the right to inspect the records and books of accounts of the Company through its representatives (including professionals) of its choice at reasonable times and after providing reasonable notice.

Article-6: Board of Directors

The management of the Company shall be supervised by a Board of Directors.

6.1 Composition

The Board of Directors ("Board") of the Company shall comprise of four directors of which two directors shall be nominated from GPL and two directors shall be nominated from SLL. At all times, GPL and SLL shall be entitled to appoint an 2:2 equal number of directors respectively of the Board. Each Party shall have the right to appoint alternate directors for the directors nominated. Each party may replace its directors at any time without approval of the other shareholders. The Parties shall vote their respective shares of the Company so that the Board is constituted as aforesaid. The appointing JV party may simply fill any vacancies in its allocated board seats.

6.2. Chairman

The Chairman of the Board shall be nominated by SLL from among the directors in consultation with and approval of GPL. The Chairman shall be entitled to a **Casting vote** if required relating to take decisions.

6.3 Managing Director

The Managing Director of the Board shall be nominated by GPL from among the directors in consultation with and approval of SLL. The Managing Director shall be entitled to perform all sorts of operational and administrative decisions and shall act as Chief Executive Officer.

6.4 Meetings of the Board

Board meetings shall be generally convened by the giving of not less than ten (10) days' notice in writing to every director stating the agenda of such meeting. Notices of Board meeting shall be sent either by electronic mail, courier or telefax. A director may participate in a meeting of the Board through teleconference or video conference and as per provisions of the Act and relevant rules. The minutes of meetings shall be signed by the Managing Director of such meetings. Moreover, the decision taken by teleconference or video conference with the directors, the meeting minutes will be approved from authorized email exchanges.

6.5 Frequency of Board meeting

The frequency of board meeting to be set as often as the Joint Venture Company requires. The procedure for calling meeting specified in the article 6.3.

6.6 Quorum

The quorum for the meeting of the Board shall be one-third of the of the Board or 2 directors & Managing Director whichever is higher, provided that the presence of at least one Director (or his alternate) appointed to nomination by GPL and one Director (or his alternate) appointed/nominated by SLL shall always be required for constituting a quorum for Board meeting. If a meeting of the Board cannot be held for want of quorum, then the meeting shall be adjourned to such day, time and place for the next meeting may be fixed.

6.7 Voting rights

Each Board Member shall have one vote on any decision of the Board and one vote of Managing Director in making board decision. It also allows a director to nominate another director to act and vote in the first director's absence and does not require any approval by the remaining directors.

6.8 Decisions

It is directed that all board decisions to be recorded in the meeting minutes and signed by members and chairman of the board. Beside the board of directors, having a core executive committee or similar body can be empowered to make day-to-day decisions and facilitate decision-making more effectively. Any discussion that needs to get approval from the board of directors should be placed in the meeting of the board. The Board shall be decided by a majority of votes of Managing Director and directors. No resolution shall be passed or decision taken in respect of the following matters, whether at a meeting of the Board or by the shareholders at a Generic meeting of the Company, unless in the case of a Board meeting, it has the unanimous affirmative vote of all directors, and in the case of a Generic meeting of the Company, such matter has the unanimous affirmative vote of the authorized representatives of GPL and SLL:

- (i) Any incurring of borrowings, indebtedness and other liabilities and the giving of any guarantee or indemnity by the Company.
- (ii) The engagement (and dismissal) and terms thereof of any top level employee and any other new employee to be entered at managerial position.

- (iii) The approval of the Company's initial Business Plan and or any changes or amendments thereto including but not limited to any proposal for changing the business of the Company, entering into of any new business or engaging in activity which is contrary to or not included in the Business Plan.
- (iv) Any proposal for selling of all of the Company's assets including its intellectual property..
- (v)

Article-7: Government Approvals

The Joint Venture agreement is to be executed between the members of the joint venture. A JV Company to be formed and registered with Registrar of Joint Stock Companies, Bangladesh.(RJSC). Name clearance is the first step for register of JV Company and after completing company registration, RJSC will issue a certificate of incorporation including Form XII and certified copy of Memorandum of Association & Articles of Association of the JV Company. Form XII contains the list of the directors of the JV Company. Memorandum of Association describes all kinds of business activities will be conducted by the company and Articles of Association endorsed all kind of business operating rules & regulation, power of Directors, Managing Directors and Chairman.

Article-8: Financial Agreements

7.1. Company Funding

The JV company shall be funded through Equity participation by both parties and debt. The Equity participation shall be 30% and debt 70%. The initial paid up capital shall be contributed as per article 3.3.

8.2. Company Bank Account

The Company shall open and maintain a bank account(s) in authorized bank(s) of in Bangladesh as determined by the Board. The bank account(s) shall be operated jointly as authorized by the Board of Directors.

8.3. Costs / Liabilities incurred prior to Incorporation

All pre-incorporation expenses, government charges, taxes, value of fixed assets, services etc. of any party that shall be charged for the incorporation shall be refunded by the Company to the Parties or all expenses would be deemed as equity of each party and shall be adjusted accordingly through equity participation.

8.4. Accounting Practices

The Company shall adopt and follow accounting rules as may be required by applicable Bangladesh law and in accordance with Generally Accepted Accounting Principles (GAAP).

8.5. Distribution of Profit

Any and all net income accruing to the Joint venture shall be distributed equally to the parties.

Article-9: Dispute Resolution and Governing Law

This Agreement shall be exclusively governed by and interpreted in accordance with the laws of Bangladesh. All disputes between the parties arising out of this Agreement or in connection with it - including its existence and validity - shall be, failing amicable settlement exclusively submitted to and finally resolved in accordance with the Bangladesh arbitration laws and the rules made there under. The language of arbitration shall be English, and the place of arbitration shall be Dhaka, Bangladesh. Among the more common methods are arbitration; bilateral discussions involving senior management from both parties; swing-vote directors, casting vote of managing director including delegation of the final decision to an independent director. Any dispute can be resolved on agreed upon the supermajority voting provisions; the possibility of “deadlock” must be taken into account in structuring the enterprise. Hopefully any deadlocks can be resolved; however, in some cases the parties must simply shut down the business, terminate the JV, dissolve the corporation and liquidate and distribute the assets.

Article-10: Dissolution and Termination of Joint Venture

The dissolution and termination of a joint venture are governed by partnership law relating to dissolution and termination. A joint venture can also be dissolved by judicial dissolution. A joint venture can be terminated in the following situations:

- The existence of disagreement and disharmony among the joint venture parties;
- The joint venture operations can only be continued on at a loss.
- One of the members has consistently or willfully commits a breach of the venture contract terms;
- One or more joint venture members have been found guilty of conduct that can be considered “prejudicial” to the business;
- Any other circumstance that might require dissolution, according to the court’s discretion

Thus, judicial dissolution may be ordered even if the joint venture members don’t agree with the decision, or are not yet ready to end the operations. This is why it’s important for the parties to cooperate with one another and to have an understanding of joint venture agreement and the purposes of the venture.

Article-11: Share Transfer

11.1. General Restrictions

Neither Party shall, directly or indirectly, transfer its shares or any interest therein, except with the prior written consent of the other Party and in strict compliance of this Agreement. Each Party further agrees that it shall not create any pledge or equivalent legal charge, lien or encumbrance without written approval of the other Party. Except as otherwise required by law, and provided herein, any transfer of shares in violation of this Agreement shall be null and void.

11.2. Transfer

All share transfers will be affected by the Parties in compliance with the prevailing laws and rules.

Article 12: Liabilities and Indemnities:

- 12.1.** GPL shall be liable for and shall indemnify, defend and hold harmless, its directors, employees and agents, against any liability for claims or suits, including costs and expenses incidental thereto, in respect of loss or damage to any property and death or injury suffered by any person, caused by the negligence or default of GPL, its directors, employees and agents in the performance of its roles and responsibilities and obligations under this JVA.
- 12.2.** LL shall be liable for and shall indemnify GPL against any liability for claims or suits, including costs and expenses incidental thereto, in respect of loss or damage to property caused by the negligence or default of SLL in the performance of its roles and responsibilities in this JVA.

The roles and responsibilities of the Parties in the Company are mentioned in summary form in 'Annexure- A'

Annexure-A**Roles and responsibilities of the 1st Party (GPL):**

.....

Roles and responsibilities of the 2nd Party (SLL):

.....

Roles and responsibilities of the Parties jointly:

Parties shall define the scope of the business activity of the JVC. Parties shall jointly develop a Business Plan including:

.....

During the term of this Agreement, neither Party shall form another alliance or joint venture for any matter that forms part of the Business Purpose of the Company, without obtaining the prior written consent of the other Party.

The terms and conditions contained in this Agreement shall as far as permissible be incorporated in the articles of association of the Company.

In witness whereof, the Parties hereto have executed this Agreement on
 this _____ day of _____ 2018.

Witness _____

Limited

Witness _____

Simple Laboratories Limited

By: _____

Name:

Title:

Generic

Pharmaceuticals

By: _____

Name:

Title:

Sample

Mortgage value : Tk. 1,40,00,000.00
(Taka One Crore & Forty Lac) only

DEED OF MORTGAGE

This **DEED OF MORTGAGE** (this “Mortgage”), is executed as of _____ day of _____, 2017,

BY

MR. ABDUL KADER alias JAHANGIR ALAM, National Identification No. 3313054678050, Date of Birth 20.05.1962, son of Late Kazimuddin and Dukkhiron Nessa, having the permanent & present address at Tulshivita, Bahadurpur, Gazipur Sadar, Gazipur (hereinafter referred to as the ‘MORTGAGOR’)

IN FAVOUR OF:

LANKABANGLA FINANCE LIMITED, a non-banking financial institution incorporated under the relevant laws of Bangladesh, having registered office at Safura Tower (Level 11), 20, Kemal Ataturk Avenue, Banani, Dhaka-1213, (hereinafter referred to as the ‘MORTGAGEE’)

WHEREAS :

A. The MORTGAGOR became the owner of the property described in schedule below (hereinafter referred to as ‘the schedule property’) in the following manner:

WHEREAS in C.S. survey operation land measuring 868.00 decimals under dag No. 25 under Khatian No. 183 was recorded in the name of Sheikh Shagor.

AND WHEREAS after death of Sheikh Shagor his wife namely Rohimon Nessa Bibi and son namely Abdul Ali became owner of his land by way of inheritance.

AND WHEREAS in S.A. survey operation land measuring 868.00 decimals under dag No. 25 under Khatian No. 412 was recorded in the name of Rohimon Nessa Bibi.

AND WHEREAS in R.S. survey operation land measuring 160.00 decimals under dag No. 45 along with some other land under different dags under Khatian No. 434 was recorded in the name of Rohimon Nessa with a remark that Abdul Ali was the peaceful possession over the schedule land.

AND WHEREAS after death of Abdul Ali his son namely Md. Kamal Hossain became owner of his land by way of inheritance.

AND WHEREAS thereafter Md. Kamal Hossain gifted land measuring 188.00 decimals under dag No. 25 to Most. Momtaj Begum vide Deed of Heba Bil Awaz No. 8054 dated 27.09.1993.

AND WHEREAS thereafter Most. Momtaj Begum sold land measuring 188.00 decimals under C.S. & S.A. dag No. 25 to Md. Zahirul Haque vide Sale Deed No. 10962 dated 17.06.1997.

AND WHEREAS thereafter Md. Zahirul Haque gifted land measuring 52.50 decimals under C.S. & S.A. dag No. 25 to Md. Ali Akbar and Mr. Abdul Kader alias Jahangir Alam [the “MORTGAGOR”] and 17.50 decimals under C.S. & S.A. dag No. 25 to Md. Abdur Rahman and Md. Kofil Uddin vide Deed of Heba Bil Awaz No. 1112 dated 20.01.1998.

AND WHEREAS thereafter Mr. Abdul Kader alias Jahangir Alam as the 1st Party [the “MORTGAGOR”] and Md. Ali Akbar as the 2nd Party and Md. Abdur Rahman and Md. Kofil Uddin as the 3rd Party amicably partitioned their saham vide a notarized Amicable Partition Deed bearing Reg. No. 07 dated 01.10.2015.

AND WHEREAS by virtue of Notarized Amicable Partition Deed bearing Reg. No. 07 dated 01.10.2015 Mr. Abdul Kader alias Jahangir Alam [the “MORTGAGOR”] as the 1st Party became owner of land measuring 26.25 decimals under C.S. & S.A. dag No. 25 corresponding R.S. dag No. 45.

AND WHEREAS thereafter Mr. Abdul Kader alias Jahangir Alam [the “MORTGAGOR”] mutated land measuring 26.25 decimals under R.S. dag No. 45 along with some other land under different dags under Mutation Khatian No. 434/kat in his name with concerned revenue authority vide Mutation Separation Case No. 1674/13-14 dated 19.12.2013 against Jot No. 3502 and paying ground rent regularly.

- B.** By a Sanction Letter being Ref. No. **021/09818/2017** dated **03.05.2017** issued by the MORTGAGEE and duly accepted by **Mr. Md. Masud Rana**, National Identification No. 3313054678048, Date of Birth 04.12.1988, son of Mr. Abdul Kader and Most. Monowara, having the permanent & present address at Tulshivita, Bahadurpur, Gazipur Sadar, Gazipur, having TIN No. 780867696013, Tax Circle- 011, Tax Zone- Gazipur, Proprietor of **M/S. Kader Villa**, business address at Bahadurpur, Bhawal, Mirjapur, Gazipur (hereinafter referred to as the “Borrower”) and a Term Loan under SME Finance (Abash), Loan Agreement No. LNSE11201704052385 dated 03.05.2017 entered into between the Borrower and the MORTGAGEE as lender followed by any amendment thereto (collectively referred to as the “Term Loan Facility Agreement”), the MORTGAGEE has agreed to grant the Borrower Term Loan facility under SME Finance (Abash) of an aggregate amount of **BDT 1,40,00,000.00 (Taka One Crore & Forty Lac)** only (the “Term Facility”) on the terms and conditions contained therein;
- C.** The MORTGAGOR is the owner and in possession of the land more fully described in the Schedule Property (hereinafter referred to the ‘Schedule Property’);
- D.** The MORTGAGEE has agreed to grant Term Facility to the Borrower on conditions, inter alia, that the MORTGAGOR shall mortgage the Scheduled property as security for the Term Facility to be availed by the Borrower;
- E.** The MORTGAGOR has agreed to create simple mortgage on the Scheduled Property;
- F.** The Mortgagee has also agreed to take simple mortgage of the Scheduled Property for a sum of **BDT 1,40,00,000.00 (Taka One Crore & Forty Lac)** only as security for the Term Facility given to the Borrower.

NOW THIS DEED OF MORTGAGE WITNESSES AS UNDER :

1. In consideration of granting the Term Facility to the Borrower by the MORTGAGEE under the Term Facility Agreement, the MORTGAGOR hereby transfer and convey by way of simple mortgage whole of the Scheduled Property with all rights, interest, easements and structures belonging thereto as security for the Term Facility given by the MORTGAGEE to the Borrower and as security for all costs, charges and expenses incidental to or in connection with this mortgage as well as for the protection, assertion, enforcement or defence of the rights and title of the MORTGAGEE and for the performance and observance of the covenants and conditions on the part of the MORTGAGOR to be observed and performed hereby, and for the demand, realisation and recovery of the sums hereby secured or any part thereof.
2. If the Borrower fails to repay the Term Facility to the MORTGAGEE in the manner stated in the Term Facility Agreement or in any other manner so agreed between the Borrower and the MORTGAGEE, then the MORTGAGEE shall be entitled to recover the outstanding dues from the MORTGAGOR under these presents by sale of the Scheduled Property without intervention of the Court of law.
3. It is further stated that the MORTGAGEE, if necessary, shall be entitled to sell the Scheduled Property without intervention of any Court of law at their own discretion as provided in section 69 of the Transfer of Property Act and the same shall be regarded as valid and binding on all the parties, to which the MORTGAGOR will not object.
4. That the Scheduled Land shall be kept in good condition at the cost and expenses of the MORTGAGOR. If the MORTGAGOR shall make default in keeping the Scheduled Property in good and substantial repair, after being required by the MORTGAGEE in writing to do so, it shall be lawful but not obligatory on the MORTGAGEE at the expense of the MORTGAGOR to repair and keep in repair, with liberty for that purpose to enter upon the Scheduled Land, and all sums expended for such purpose shall be repayable by the MORTGAGOR to the MORTGAGEE on demand, together with interest thereon. The MORTGAGOR shall take all necessary steps for the preservation of the Scheduled property from destruction, forfeiture or sale (except as herein authorised by the MORTGAGEE), and for the defence of its title thereto, and in case the MORTGAGOR shall refuse or neglect to take any such steps after being required by the MORTGAGEE in writing to do so, it shall be lawful but not obligatory on the MORTGAGEE to expend sums necessary for such purpose, and all sums expended for such purpose shall be repayable by the Borrower to the MORTGAGEE on demand, together with interest thereon.
5. That the MORTGAGOR will not allow any Receiver to be appointed for the Scheduled Property except at the instance of the MORTGAGEE, who shall always at its discretion be able to appoint a Receiver for the said land nor shall any distress or execution be levied or enforced upon or against the said land or any attempt to create any charge or mortgage on the said land which may prejudice the security hereby created shall be illegal and of no effect.
6. That the MORTGAGOR hereby declare that the MORTGAGOR are the sole and absolute owners in possession of the Scheduled Property and the Scheduled Property is free from all

encumbrances and the MORTGAGOR are legally entitled to mortgage the same with the MORTGAGEE by way of simple mortgage and it has not done or suffered, and shall not do, any act, deed or matter by reason of which the same may be or become in any manner charged or encumbered or otherwise prejudicially affected. The MORTGAGOR shall not without the previous written consent of the MORTGAGEE grant any lease, sublease or licence in respect of the Scheduled Property or any part thereof.

7. The MORTGAGOR hereby represent and warrant to the MORTGAGEE that the simple mortgage and security interest granted pursuant to this Mortgage Deed, together with the registration of this Mortgage with the Property Registrar constitutes a valid and perfected first priority mortgage and security interest on the Scheduled Property in favour of the MORTGAGEE.
8. That the MORTGAGOR will permit the MORTGAGEE, its agent, employees, and nominees from time to time to enter into or upon the Scheduled property or any part thereof and to view, inspect and value the same and take inventories thereof, as and when necessary.
9. That the MORTGAGOR hereby agree that the MORTGAGOR will pay all taxes and rates which are or may become payable on the Scheduled Land with the MORTGAGEE and agrees to indemnify the MORTGAGEE for any default of the MORTGAGOR in making such payments and on demand by the MORTGAGEE, the MORTGAGOR shall produce receipts or other evidence of such payments, and in the event the MORTGAGOR shall neglect or refuse to make such payments or produce such receipts or evidence, after being required by the MORTGAGEE in writing to do so, it shall be lawful but not obligatory on the MORTGAGEE to expend sums necessary for such purpose, and all sums expended for such purpose shall be repayable by the MORTGAGOR and/or the Borrower to the MORTGAGEE on demand, together with interest thereon.
10. That the MORTGAGOR hereby agree that neither this mortgage nor any thing contained herein shall impair, extinguish, limit or otherwise prejudicially affect all or any of the rights, remedies, privileges, benefits or securities or guarantee which the Mortgagee has acquired or may acquire hereinafter or that may otherwise be available to the MORTGAGEE.
11. That the MORTGAGEE is at liberty to enforce the mortgage at any time if the Borrower fails or defaults in repaying the Term Facility in terms of the Term Facility Agreement and in such event(s) the MORTGAGEE is at liberty to enter upon and take possession of the Scheduled Property and thenceforth to quietly possess and enjoy the same, to receive the rents and profits thereof, and/or to lease the same, without interruption, protest, claim or demand by the MORTGAGOR or any person(s) whatsoever.
12. That on payment of the full outstanding amount under the Term Facility Agreement and on payment of all interests and other charges due thereon the MORTGAGOR at its own costs, will be entitled to redeem the Scheduled Property from the MORTGAGEE free from all encumbrances and charges accruing on the MORTGAGEE and on such redemption this mortgage shall be deemed to have been extinguished.

13. In the event the MORTGAGEE suffer any loss/damage arising out of or caused by any false statement, misrepresentation or concealment of facts regarding the right, title, interest and possession of the Scheduled Property, the MORTGAGOR shall be liable to refund the Mortgage Value i.e. **BDT 1,40,00,000.00 (Taka One Crore & Forty Lac)** only to the MORTGAGEE immediately on demand and shall also be liable to be punished for such offence under the existing law and the exercise of the right under this provision shall under no circumstances prejudice the MORTGAGEE from taking any other recourse against the Borrower for recovery of its dues.
14. If the Scheduled Property or any part thereof or any interest therein is sold owing to failure by the MORTGAGOR to pay revenue or other charges of public nature due in respect thereof or is acquired under any law for the time being in force, the MORTGAGEE shall be entitled to claim payment of the Term Facility and/or other sums secured hereby in whole or part out of any surplus of the sale proceeds remaining after payment of such revenue or charges and deductions, notwithstanding that the Term Facility has not become due.
15. The mortgage hereby created shall not be discharged by the intermediate payment or satisfaction of the whole or part of the indebtedness of the Borrower to the MORTGAGEE but shall be a continuing security and shall extend to cover any indebtedness which shall for the time being constitute the balance due from the Borrower under the Term Facility Agreement or hereunder.
16. Certificates by the MORTGAGEE as to the money and liabilities for the time being due or incurred in connection with the Term Facility Agreement, Term Facility and/or this Deed shall be conclusive evidence against the Borrower in any legal proceedings.
17. The MORTGAGOR agree that any demand or notice including all notices in connection with this deed or the mortgage hereby created shall be deemed proper and sufficient if posted to the MORTGAGOR at its address last available or notified to the MORTGAGEE in writing, and the same shall be deemed to have been delivered in the due course of post whether actually delivered or not.
18. The expressions “MORTGAGOR”, “MORTGAGEE” and “Borrower” shall where the context admits include their respective successors in title, and for the MORTGAGEE, its respective assigns.

SCHEDULE OF THE PROPERTY

All that piece and parcel of land measuring 26.25 (twenty six point two five) decimals situated within District-Gazipur, Police Station-Gazipur Sadar, Sub-Registrar Office-Gazipur Sadar, under J.L. No. C.S. 17, S.A. 17, R.S. 17, Mouza-Bahadurpur, under Khatian Nos. C.S. 183, S.A. 412, R.S. 434, R.S. Jot No. 3502, under Dag Nos. C.S. & S.A. 25, R.S. 45 along with all other structure constructed or to be constructed thereon which is butted and bounded by:

On the North: Road (40 ft. wide pucca)
 On the South: Land of Mr. Jahirul Haque
 On the East: Land of Mr. Ali Akbar
 On the West: Land of Mr. Bahar Uddin

IN WITNESS WHEREOF, the MORTGAGOR has caused this Deed of Mortgage to be duly executed and delivered as of the date first above written.

In witness of:

1.

2.

ABDUL KADER alias JAHANGIR ALAM

(Signature of the MORTGAGOR)

AFFIDAVIT

(This Affidavit is made in compliance of President Order No. 142 of 1972, Section 52 A (g) of Registration Act, 1908, and Section 53E of Transfer of Property Act, 1882)

To

The Sub-Registrar, Gazipur Sadar

I, **ABDUL KADER alias JAHANGIR ALAM**, National Identification No. 3313054678050, Date of Birth 20.05.1962, son of Late Kazimuddin and Dukkhiron Nessa, having the permanent & present address at Tulshivita, Bahadurpur, Gazipur Sadar, Gazipur, do hereby solemnly affirm and declare that I am the national of Bangladesh by birth.

I declare that:

1. That the immovable property proposed for mortgage is not attached under the Bangladesh Collaborators (Special Tribunal) order No. 8 of 1972.
2. That the immovable property proposed for mortgage is not an abandoned property within the meaning of the Bangladesh Abandoned Property (Control, Management and Disposal Order, 1972 (P.O. No. 16 of 1972).
3. That the immoveable property proposed for mortgage is not vested upon the Government or forfeited in favor of the Government in accordance with law for the time being in force.
4. That the proposed mortgage does not contravene any provision of any other law for the time being in force.
5. That the proposed mortgage is not liable to be void under Article 5A of the Bangladesh Land Holding (Limitation) Order, 1972(P.O. No. 98 of 1972).
6. That the mortgage for proposed immoveable property has been correctly described and has not been undervalued and I have the lawful right to mortgage in such property.

I hereby further declare that:

I am the absolute owner of the property. I did not execute any contract for sale with any party or transferred elsewhere or mortgaged with any party.

I have valid title and right on the property described on the instrument and the statements made herein are true to my knowledge and belief.

Date:

Signature of Deponent

Declaration of Identifier:

I hereby declare that, deponent is known to me and she put her signature on the instrument in my presence.

Signature of Identifier

Sample

IRREVOCABLE GENERAL POWER OF ATTORNEY

Serial No. of Deed : Book No. Deed No.
Name of Sub-Registry : Gazipur Sadar
Office
Summary of the Deed :

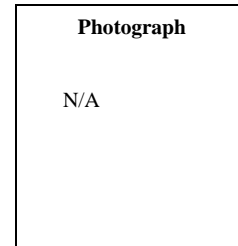
Nature/Kinds of Deed	Mouza	Union/ Ward	Police Station	District
Deed of Power of Attorney	Bahadurpur		Gazipur Sadar	Gazipur

Description of Property	Kind of Land	Price/ Value
Total Land: Land measuring 26.25 (twenty six point two five) decimals along with all other structures constructed or to be constructed thereon together with all rights, titles, interest and easement attached thereto.	Land	Not Applicable
Empowered land: Same as above		

1. Execution date : English :
Bengali :

2. Names, signatures and addresses of the PRINCIPALS:

Name : **MR. ABDUL KADER** alias
JAHANGIR ALAM
 Father's Name : Late Kazimuddin
 Mother's Name : Dukkhiron Nessa
 Husband's Name : N/A
 Age/Date of Birth : 20.05.1962
 Nationality : Bangladeshi
 Religion : Islam
 Profession :
 NID No. : 3313054678050

**Permanent Address:**

Tulshivita, Bahadurpur, Gazipur Sadar, Gazipur

Present Address:

Tulshivita, Bahadurpur, Gazipur Sadar, Gazipur

3. Names, signatures and addresses of the ATTORNEY (photograph is not applicable for Court/ Government/Non-Government Institution/ Organization):

Name : **LankaBangla Finance Limited**, a non-banking financial institution incorporated under the relevant laws of Bangladesh having its registered office address at Safura Tower (Level 11), 20, Kemal Ataturk Avenue, Banani, Dhaka- 1213.

Permanent Address:	Residence Address:
Village/Road: Safura Tower (Level 11), 20, Kemal Ataturk Avenue, Banani, Dhaka- 1213.	Village/Road: Safura Tower (Level 11), 20, Kemal Ataturk Avenue, Banani, Dhaka- 1213.
Post Office : Banani	Post Office : Banani
Police Station: Banani	Police Station: Banani
District : Dhaka	District : Dhaka

4. Photocopy of National ID card/Birth Certificate/Passport of the Principals and Executants: Photocopy attached herewith.**5. Description of Powers delegated to the ATTORNEY & Its Object:**

NOW, THEREFORE, BY THESE PRESENTS, I, ABDUL KADER alias JAHANGIR ALAM, National Identification No. 3313054678050, Date of Birth 20.05.1962, son of Late Kazimuddin and Dukkhiron Nessa, having the permanent & present address at Tulshivita, Bahadurpur, Gazipur Sadar, Gazipur, do hereby nominate, constitute and appoint:

LANKABANGLA FINANCE LIMITED

Safura Tower (Level 11), 20, Kemal Ataturk Avenue

Banani, Dhaka- 1213 acting through any authorised signatory or signatories, to be the true and lawful Attorney of me to exercise any of the following powers for and on behalf of me from time to time:

19. To enter into and take possession of the Scheduled Property or any part thereof and to take its entire administration, management, and control;
20. To sell or transfer or dispose of the Scheduled Property or any interest or part thereof together or in parcel on account and at our risk, without intervention of any Court of law, either privately or by public auction or by private contract on such terms and conditions as the Attorney shall think fit and proper, without any reference to us;
21. To realize and receive the sale proceeds and any other money receivable in respect of the Scheduled Property or any part thereof and apply the same towards adjustment of liabilities of the Borrower or any portion thereof under the Term Loan Facility Agreement;
22. To execute the necessary sale deeds, present those for registration, to admit execution and get the same registered and to vest the Scheduled Property or any part thereof in the transferee, together with all rights of the owner in, upon, or to the Scheduled Property or any part thereof as if the same had been sold to the transferee by us as the owners;
23. To incur any expenditure that may be necessary for taking over, management and control of the Scheduled Property or any part thereof and for sale, mortgage or disposal thereof and to incur any liabilities on behalf of us for the said purpose;
24. To advertise through newspapers or otherwise for auction of the Scheduled Property or any part thereof, to arrange and effect the auction or sale, to receive the bid money, and apply the same in meeting expenses and in liquidating indebtedness of the Borrower under the Term Loan Facility Agreement;
25. To negotiate for sale/transfer of the Scheduled Property or any part thereof, settle the terms of sale/transfer, to sign, seal, execute and deliver all such contracts, agreements, sale deeds or deeds of conveyance and/or other documents, and/or instruments of transfer with all necessary and reasonable covenants therein on behalf of us, and generally upon such terms and conditions as the Attorney shall deem necessary or expedient;
26. To do and perform all other acts, matters and things that may be necessary or proper for completing the sale or disposal of the Scheduled Property or any part thereof;
27. To realize, receive and take payment of any consideration or purchase money or other moneys that may become payable to us in connection with such sale or disposal as aforesaid and upon receipt thereof to give and grant sufficient and effectual receipts or discharges for the same;
28. To collect, receive and take payment of any of receivables or book debts or other moneys that may become payable to us from any person, firm, company or authority and upon receipt thereof to give and grant sufficient and effectual receipts or discharges for the same;
29. To represent me before the Government of Bangladesh or any other governmental authorities, the Bangladesh Bank or any other bank, company, corporation or body in connection with the transactions referred to hereinabove and sign and execute whatever instruments that may be necessary for obtaining the approval, if required, of such transactions by any governmental agency or any other organization or institution for the purpose of completion of the sale/transfer of the Scheduled Property;
30. To appear, represent and act in all civil or criminal courts or arbitration and before judicial and revenue authorities, either in the original or appellate side as well as in any government

department, local authority, autonomous, semi-autonomous authority or other body corporate, and to prosecute or defend or to take part in all or any action, application, suit, appeal, proceeding, and for such purposes to subscribe, sign and verify all complaints, written statements and Memorandum of Appeal and to do all acts, deeds and things which may be necessary in relation thereto and to execute any power or vokalatnamas by signing on behalf of us to prevent the impairment of the Scheduled Property or to preserve and protect the interests of LankaBangla therein;

31. To appoint and retain lawyers and advocates and to remove such retainers from time to time and again to appoint as occasion shall require for the aforesaid purposes;
32. To apply for withdrawal, withdraw and receive all moneys that may be deposited in any court or office concerning the Scheduled Property or any part thereof in case of acquisition or requisition of the Scheduled Property or any part thereof by any Governmental Authority;
33. Regardless of whether an Event of Default has occurred and is continuing under the Loan Agreement, to perfect a legal mortgage or charge of the Scheduled Property or any part thereof in favour of LankaBangla at such time and in such manner and present it for registration and get the same registered in favour of LankaBangla at my cost and on account of us;
34. To take all steps for obtaining income tax clearance certificate, if any, for the registration of sale deeds, deeds of conveyance and mortgage deeds relating to the sale/transfer or mortgage of the Scheduled Property or any part thereof, and further, to obtain any other sanction or permission from any authority for sale, transfer or legal mortgage of the Scheduled Property;
35. To appear before any District Registrar or Sub-Registrar or other officers or authority having jurisdiction in that behalf in relation to the Scheduled Property for registration and acknowledge and register pursuant to the provisions and regulations in that respect for the time being in force, all instruments and writings including sale deeds, deeds of conveyance, mortgage deeds executed and signed either by us directly or under the authority of these presents and to present for registration and to admit execution thereof and do all such acts and deeds in that behalf as may be, or the Attorney may seem, proper and expedient;
36. To cause mutation when it is necessary in the revenue records and to make such statements personally or through lawyers or other agents to effectuate the purposes contained herein;
37. To affirm or swear such affidavits as may be necessary from time to time in respect of the Scheduled Property or any part thereof as required by the Bangladesh Transfer of Immovable Property (Temporary Provisions) Order, 1972 or any other law in respect of the Scheduled Property or any part thereof;
38. From time to time to appoint any substitute or substitutes and to delegate to him or them all or any of the powers authorities or discretion vested in the Attorney under or by virtue of these presents (other than this power of sub-delegation) and to remove any such substitute or substitutes at pleasure and appoint another or others in his or their place to do all such other acts, deeds, matters and things as may be necessary, usual, proper or expedient for the purposes hereof.

AND I do hereby ratify and confirm whatever the said Attorney shall lawfully do or cause to be done by virtue of these presents.

AND the powers conferred on the Attorney hereunder are solely to protect the interests of LankaBangla in the Scheduled Property and shall not impose any duty upon the Attorney to exercise any such power. The Attorney shall be accountable only for the amount that is actually received as a result of the exercise of such powers, and neither it, nor any of its officers, directors, employees, or agents, shall be responsible to us for any act or failure to act hereunder.

This POWER OF ATTORNEY has been made in consideration of the Facility granted to the Borrower by LankaBangla and shall be irrevocable till entire liabilities of the Borrower with LankaBangla are fully liquidated and the Attorney releases us absolutely from all liabilities whatsoever and I shall not execute any other power of attorney in favour of any one in connection with the Scheduled Property.

6. Object to execute the Power of Attorney :

- A. By a Sanction Letter being Ref. No. **021/09818/2017** dated **03.05.2017** issued by LankaBangla Finance Limited, a non-banking financial institution incorporated under the relevant laws of Bangladesh, having registered office at Safura Tower (Level 11), 20, Kemal Ataturk Avenue, Banani, Dhaka- 1213 (hereinafter referred to as the “ATTORNEY or LankaBangla”) duly accepted by **Mr. Md. Masud Rana**, National Identification No. 3313054678048, Date of Birth 04.12.1988, son of Mr. Abdul Kader and Most. Monowara, having the permanent & present address at Tulshivita, Bahadurpur, Gazipur Sadar, Gazipur, having TIN No. 780867696013, Tax Circle- 011, Tax Zone- Gazipur, Proprietor of **M/S. Kader Villa**, business address at Bahadurpur, Bhawal, Mirjapur, Gazipur (hereinafter referred to as the “Borrower”) and the Term Loan Facility Agreement No. LNSE11201704052385 dated 03.05.2017 entered into between the BORROWER and ATTORNEY or LankaBangla as lender followed by any amendment thereto (collectively referred to as the “Term Loan Facility Agreement”), the ATTORNEY has agreed to grant the Borrower Term Loan facility under SME Finance (Abash) (the “Term Loan Facility”) on the terms and conditions contained therein;
- B. In consideration of LankaBangla granting the Borrower & the Borrower, pursuant to the Term Loan Facility Agreement, I have as security for the said Facility, mortgaged the immovable properties described in the schedule herein below (hereinafter referred to as the ‘Scheduled Property’) in terms of the Term Loan Facility Agreement;
- C. In order to exercise the power by LankaBangla to sell the Scheduled Property, it is necessary for me to execute this Irrevocable General Power of Attorney in favour of LankaBangla in the manner stipulated hereunder.
- D. Wherever any expressed term is used in this Agreement and not defined hereunder, shall have the same meaning as those expressed and defined in the Term Loan Facility Agreement

7. Chain of ownership of the property for at least 25 years & Description of the Schedule Property:

The PRINCIPAL became owner of the property described in schedule below (hereinafter referred to as ‘the schedule property’) in the following manner:

WHEREAS in C.S. survey operation land measuring 868.00 decimals under dag No. 25 under Khatian No. 183 was recorded in the name of Sheikh Shagor.

AND WHEREAS after death of Sheikh Shagor his wife namely Rohimon Nessa Bibi and son namely Abdul Ali became owner of his land by way of inheritance.

AND WHEREAS in S.A. survey operation land measuring 868.00 decimals under dag No. 25 under Khatian No. 412 was recorded in the name of Rohimon Nessa Bibi.

AND WHEREAS in R.S. survey operation land measuring 160.00 decimals under dag No. 45 along with some other land under different dags under Khatian No. 434 was recorded in the name of Rohimon Nessa with a remark that Abdul Ali was the peaceful possession over the schedule land.

AND WHEREAS after death of Abdul Ali his son namely Md. Kamal Hossain became owner of his land by way of inheritance.

AND WHEREAS thereafter Md. Kamal Hossain gifted land measuring 188.00 decimals under dag No. 25 to Most. Momtaj Begum vide Deed of Heba Bil Awaz No. 8054 dated 27.09.1993.

AND WHEREAS thereafter Most. Momtaj Begum sold land measuring 188.00 decimals under C.S. & S.A. dag No. 25 to Md. Zahirul Haque vide Sale Deed No. 10962 dated 17.06.1997.

AND WHEREAS thereafter Md. Zahirul Haque gifted land measuring 52.50 decimals under C.S. & S.A. dag No. 25 to Md. Ali Akbar and Mr. Abdul Kader alias Jahangir Alam [the “PRINCIPAL”] and 17.50 decimals under C.S. & S.A. dag No. 25 to Md. Abdur Rahman and Md. Kofil Uddin vide Deed of Heba Bil Awaz No. 1112 dated 20.01.1998.

AND WHEREAS thereafter Mr. Abdul Kader alias Jahangir Alam as the 1st Party [the “PRINCIPAL”] and Md. Ali Akbar as the 2nd Party and Md. Abdur Rahman and Md. Kofil Uddin as the 3rd Party amicably partitioned their saham vide a notarized Amicable Partition Deed bearing Reg. No. 07 dated 01.10.2015.

AND WHEREAS by virtue of Notarized Amicable Partition Deed bearing Reg. No. 07 dated 01.10.2015 Mr. Abdul Kader alias Jahangir Alam [the “PRINCIPAL”] as the 1st Party became owner of land measuring 26.25 decimals under C.S. & S.A. dag No. 25 corresponding R.S. dag No. 45.

AND WHEREAS thereafter Mr. Abdul Kader alias Jahangir Alam [the “PRINCIPAL”] mutated land measuring 26.25 decimals under R.S. dag No. 45 along with some other land under different dags under Mutation Khatian No. 434/kat in his name with concerned revenue authority vide Mutation Separation Case No. 1674/13-14 dated 19.12.2013 against Jot No. 3502 and paying ground rent regularly.

SCHEDULE OF THE PROPERTY

All that piece and parcel of land measuring 26.25 (twenty six point two five) decimals situated within District-Gazipur, Police Station-Gazipur Sadar, Sub-Registrar Office- Gazipur Sadar, under J.L. No. C.S. 17, S.A. 17, R.S. 17, Mouza-Bahadurpur, under Khatian Nos. C.S. 183, S.A. 412, R.S. 434, R.S. Jot No. 3502, under Dag Nos. C.S. & S.A. 25, R.S. 45 along with all other structure constructed or to be constructed thereon.

SKETCH MAP & BOUNDARY OF THE LAND/PROPERTY:

N



BOUNDARY:

On the North: Road (40 ft. wide pucca)
 On the South: Land of Mr. Jahirul Haque
 On the East: Land of Mr. Ali Akbar
 On the West: Land of Mr. Bahar Uddin

- 8. Description of power given to the attorney in respect of Development of the schedule property and transfer of such plot or apartment/apartments:** Not Applicable.
- 9. Value of the Property empowered to the Attorney as per section 2(2):** Not Applicable.
- 10. Description of Value (if any) received by the Executants:** Not Applicable.
- 11. Description of the monetary liability:** Not Applicable.
- 12. Validity Period of Power of Attorney:** : Until repayment of the Loan along with all interest, penalty interest, other fees, charges, duty etc. and all outstanding under the Term Facility Agreement to the absolute satisfaction of the Attorney/Lender.
- 13. Description of each share of land in case of more than one PRINCIPALS and Description of each share of land in case of more than one Attorney :** Not Applicable
- 14. Any other Condition/Conditions agreed by the parties :** Not Applicable.

15. KNOWING THE PARTICULARS OF THIS DEED AND HEREBY AGREED BY THE ATTORNEY:

Signature of the ATTORNEY
<hr/> For LankaBangla Finance Limited

KNOWING THE PARTICULARS OF THIS DEED AND AGREED WITH THE SAME I THE EXECUTANT SET FORTH MY SIGNATURE HEREUNDER :

16.

Signature of the PRINCIPAL(S)
<hr/> ABDUL KADER alias JAHANGIR ALAM

17. Name, Address and Signature of Witnesses:

A. Name:		Signature and Date	
Father's/ Husband's Name :			
Mother's name			
Village/Road No.:		Post Office:	
Police Station:		District :	
Religion :		Profession :	
Nationality :			

B. Name:		Signature and Date	
Father's/ Husband's Name :			
Mother's name			
Village/Road No.:		Post Office:	
Police Station:		District :	
Religion :		Profession :	
Nationality :			

18. Drafted and composed by :

Name : Advocate Lutfor Rahman
Signature :

Father's Name: Late Al-haj Gazi Abdul Jabbar
License No.: 958
Address: Mukti Bhaban (2nd Floor), Room No. 7, 21/1 Purana Paltan, Dhaka-1000.

19. Affidavit by the PRINCIPALS:

AFFIDAVIT

(This Affidavit is made in compliance of President Order No. 142 of 1972, Section 52 A (g) of Registration Act, 1908, and Section 53E of Transfer of Property Act, 1882)

To

The Sub-Registrar, Gazipur Sadar

I, **ABDUL KADER alias JAHANGIR ALAM**, National Identification No. 3313054678050, Date of Birth 20.05.1962, son of Late Kazimuddin and Dukkhiron Nessa, having the permanent & present address at Tulshivita, Bahadurpur, Gazipur Sadar, Gazipur, do hereby solemnly affirm and declare that I am the national of Bangladesh by birth.

I declare that:

1. That the immovable property proposed for this deed of IGPA is not attached under the Bangladesh Collaborators (Special Tribunal) order No. 8 of 1972.
2. That the immovable property proposed for this deed of IGPA is not an abandoned property within the meaning of the Bangladesh Abandoned Property (Control, Management and Disposal Order, 1972 (P.O. No. 16 of 1972).
3. That the immovable property proposed for this deed of IGPA is not vested upon the Government or forfeited in favor of the Government in accordance with law for the time being in force.
4. That the property proposed for this deed of IGPA does not contravene any provision of any other law for the time being in force.
5. That the property proposed for this deed of IGPA is not liable to be void under Article 5A of the Bangladesh Land Holding (Limitation) Order, 1972(P.O. No. 98 of 1972).
6. That the deed of IGPA for proposed immovable property has been correctly described and has not been undervalued and I have transferable lawful right in such property.

I hereby further declare that :

I am the absolute owner(s) of the property. I did not execute any contract for sale with any party or transferred elsewhere or mortgaged with any party.

I have valid title and right on the property described on the instrument and the statements made herein are true to my knowledge and belief.

Date:

Signature of Deponent

Declaration of Identifier :

I hereby declare that, deponent is known to me and she put her signature on the instrument in my presence.

Signature of Identifier

20. Signature of the Sub-Registrar with name and designation :

CHAPTER 3

Legal Opinion

Legal opinion is a document of major importance. Black's Law Dictionary defines a "legal opinion" as "[a] written document in which an attorney provides his or her understanding of the law as applied to assumed facts."¹ It is given by the enrolled Advocates who are permitted under the Bangladesh Bar Council. It creates a direct connection between a lawyer and a client. There is no specific format of legal opinion. It depends on style and lawyer's competence. However, Bangladesh Bank has provided a format for legal opinion relating to land for the purpose of sanctioning loan by the bank and financial institution. Since legal opinion is a very important document for the client to understand the whole thing from legal perspective for coming up into a decision, therefore generally the lawyers try to make the opinion as much as simple, comprehensive and all inclusive for easy and better understanding of the client. It contains date, without prejudice, addressee (description of client), subject matter of opinion, documents perused (basing on which opinion is being made), facts in short, reference of law, opinion and other relevant analysis. It must be remembered that legal opinion should address the issues raised by the clients.

An opinion from lawyers issued in letter form expressing legal conclusions about and/or legal analysis of a transaction or matter which is relied on by the addressee of the opinion. The main purposes of a legal opinion are - to inform the addressee of the legal effect of a transaction or matter, and to identify legal risks that the addressee should consider further and evaluate. For example, in a cross-border transaction, a legal opinion may be obtained from lawyers in a foreign jurisdiction opining on whether a transaction document is valid and enforceable in that jurisdiction and complies with local law.²

Sample

Legal Opinion

(Without Prejudice)

Date : 5.09.2019.

To,
The Managing Director
Dutch Bangla Bank Limited
Address :
.....

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1. Black's Law Dictionary, 10th Ed., p. 1266 (2014).
 2. <[https://uk.practicallaw.thomsonreuters.com/1-200-1399?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/1-200-1399?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> (26.04.2020).

Dear Sir,

It appears from the Registered Sale Deed No. 123 dated 10.02.2018 executed between Mr. Md. Munabbar Talukder and Ms. Piya Rahman Khan (Shikha) that Md. Munabbar Talukder is a bonafide purchaser of the Schedule Apartment, and as a bonafide purchaser of the apartment, any liability of said Ms. Shikha should not shift upon Mr. Munnabbar. However, it won't apply in case of bank loan because it is apparent from the documents that loan of Ms. Shikha from Jibon Bank Limited is older than loan of Mr. Munabbar from Bangla Bank Limited (BBL). Your loan was sanctioned on 14.03.2018 whereas the Artha Jari Case No. 113 of 2017 of Jibon Bank Limited was filed in the year 2017 (loan obtained on 15.07.2010). Loan of Janata Bank was created by Ms. Sitara over the **entire land** which includes the Schedule Apartment. Therefore, Janata Bank Limited still holds better position than your Bank. Moreover, Janata Bank filed Artha Rin Suit and obtained decree from Artha Rin Suit and such Artha Rin Suit was subsequently reached at the stage of Artha Jari which is now pending for the process under Section 33(5) of the Artha Rin Adalat Ain, 2003.

At this stage, BBL may do the following things—

1. File an application for addition of party for being co-judgment/decreed holder and establish your claim over the Schedule Apartment.
2. If the Artha Execution Case is completed already, then you can file a Misc. Case for setting aside the judgment of Artha Rin Suit and Execution Case. In that suit you can file an application for staying the further process of Execution Case i.e. drawing sale certificate, taking possession, etc.
3. By this way, you can establish your claim over the Apartment, and it may happen that while Jibon Bank would sell the entire land, it may give you the amount against the loan or may come into a negotiation with you.
4. The current mortgage will secure your right though complicated manner and only through court of law. BBL may take immediate action.
5. Yes, you can display sign board.
6. BBL can invoke the provision of Section 32 of the Artha Rin Adalat Ain, 2003 which allows the third party to secure any right. For ready reference, Section 32 is quoted below—

৩২। জারীর বিরুদ্ধে আপত্তি :

- (১) অর্থ ঋণ আদালতে ডিক্রী বা আদেশ হইতে উদ্ভূত জারী মামলায় কোন তৃতীয় পক্ষ দেওয়ানী কার্যবিধি আইনের বিধান মতে দাবী পেশ করিলে, আদালত প্রাথমিক বিবেচনায় উক্ত দাবী সরাসরি খারিজ না করিলে, ডিক্রীদার অনূর্ধ্ব ৩০ (ত্রিশ) দিবসের মধ্যে উহার বিরুদ্ধে লিখিত আপত্তি দায়ের করিয়া শুনানী দাবী করিতে পরিবেন।
- (২) উপরোক্ত মতে দাবী পেশ করিবার ক্ষেত্রে, দরখাস্তকারী, ডিক্রীকৃত অর্থের, অথবা ডিক্রীকৃত অর্থের আংশিক ইতিমধ্যে আদায় হইয়া থাকিলে অনাদায়ী অংশের, ১০% এর সমপরিমাণ জামানত বা বন্ড দাখিল করিবে, এবং অনুরূপ জামানত বা বন্ড দাখিল না করিলে উক্ত দাবী অগ্রাহ্য হইবে।
- (৩) অর্থ ঋণ আদালত, উপধারা (১) এর অধীনে কোন দাবী বিবেচনার্থে গ্রহণ করিলে, সংশ্লিষ্ট বিষয়ে লিখিত আপত্তি দাখিল হওয়ার ৩০ (ত্রিশ) দিবসের মধ্যে উহা নিষ্পন্ন করিবে এবং কোন কারণে ৩০ (ত্রিশ) দিবসের মধ্যে উহা নিষ্পন্ন করিতে ব্যর্থ হইলে, কারণ লিপিবদ্ধ করতঃ উক্ত সময়সীমা অনূর্ধ্ব আরো ৩০ (ত্রিশ) দিবস বর্ধিত করিতে পারিবে।

- (৪) উপধারা (৩) এর অধীন দাখিলকৃত আপত্তি নিষ্পন্ন করিয়া আদালত যদি অবধারণ করিতে পারে যে, উপধারা (১) এর অধীন দাবী সম্বলিত দরখাস্তটি ডিক্রীদারের পাওনা বিলম্বিত বা প্রতিহত করিবার অসাধু উদ্দেশ্যে দায়ের করা হইয়াছিল, তাহা হইলে আদালত উক্ত দরখাস্ত খারিজ করিবার সময় একই আদেশ দ্বারা উপধারা (২) এর অধীন দাখিলকৃত জামানত বা বন্ড বাজেয়াপ্ত করিবে এবং ডিক্রীকৃত টাকা যে পদ্ধতিতে আদায় করা হয়, বাজেয়াপ্ত জামানত বা বন্ডের অধীন টাকা একই পদ্ধতিতে আদালত আদায় করিবে এবং আদায়কৃত অর্থ ডিক্রীদারকে প্রদান করিবে।

In addition, Order XXI Rule 100 and 101 of the Code of Civil Procedure, 1908 also gives wide scope to the third party like you (in the present scenario). Rule 100 and 101 are quoted below—

“100. Dispossession by decree-holder or purchaser :- (1) Where any person other than the judgment-debtor is disposed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. (2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Bona fide claimant to be restored to possession :- Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some persons other than the judgment-debtor, it shall direct that the applicant be put into possession of the property. Rules not applicable to transferee lite bendent.”

Though the issue of possession is not in favor of DBBL, however DBBL can claim constructive possession or a claim of bonafide mortgagor.

It is a well settled principle of law that even after completion of Artha Execution Case, a third party can file application under Rule 100 and 101 at anytime. The Artha Rin Adalat by exercising its discretion under Order XXI Rule 100 and 101 of the Code can entertain the application and after delivery of possession of the Schedule property to the petitioner-auction purchaser, the Adalat has not become functus –officio (Sanaullah –vs- Government of Bangladesh- 17 BLC 481).

Under the aforesaid position of fact and law, BBL can take immediate action for being addition of party in the Artha Execution Case No. 113 of 2017 or to invoke Section 32 or to file Misc. Case for securing your rights and interests over the Schedule Apartment.

If you’ve any queries further, please do not hesitate to contact with us at your convenience.

Schedule Apartment/Property

.....

Sincerely Yours,

(.....)

Advocate,

Supreme Court of Bangladesh.

Sample**Legal Opinion***(Without Prejudice)*

Dated: 9.01.2020.

For

The Managing Director
Shine Designs Ltd,
11 Norshinghopur, Ashulia, Dhaka.

Subject : Legal Opinion regarding 25 workers' issue

Dear Sir/Madam,

Thank you for seeking for our legal opinion. On the issue concerned, we have examined the papers you sent and also perused the relevant provisions of laws. The issue in short is that your company namely Shine Designs Ltd (*henceforth referred to as 'the company'*) is facing some problem with its 25 workers regarding their long term voluntary absence from work, and now conversely demanding high payments from the company.

Documents Perused

- Photocopy of the appointment letter of one worker namely Md. Bashar Ahmed, dated 14.11.2011 as a sample of appointment of all 25 workers.
- Photocopy of the Office Notice as to the cancellation of providing free bus service to the workers, dated 01.01.2019.
- Photocopy of the application sent by the 25 workers to the Dekko Designs Limited, dated 21.06.2019.
- Photocopies of notices sent by the Dekko Designs Limited to the 25 workers dated 23.06.2019.
- Photocopies of notices sent by the Dekko Designs Limited to the 25workers dated 04.07.2019.
- Photocopies of notices sent by the Dekko Designs Limited to the 25workers dated 13.07.2019.
- Photocopies of notices asking the 25 workers to take their due salaries and other benefits as per relevant law, dated 01.08.2019.
- Photocopy of the application sent to Dekko Designs Limited by one of the 25 workers namely Md. Bashar Ahmed, dated 21.10.2019.

Background of the issue

On perusal of the above documents, it appears that on 01.01.2019, Dekko Designs Limited (*hereinafter referred as the Company*) issued an Office Notice declaring that the Company would stop providing the transport facility (Bus Service) to the workers for their conveyance from 4.06.2019. In the notice, the Company also directed the concerned workers to take any required measure to cope with the cancellation of transport facility.

On 04.06.2016, the Company did not provide the Bus Service as per the aforesaid office Notice dated 01.01.2019. As a result, 25 Workers did not come to work on the very first day of cancelling the bus service and continued to be absent from work for more than 10 days without taking leave from or giving any notice to the concerned authority of the Company.

On 21.06.2019, the aforesaid 25 workers sent an application. By the application, the workers requested the Company to resume the bus service and thereafter, permit them to join work. It is to be noted the application was sent in co-operation of the General Secretary of Bangladesh Garments and Industrial Worker Federation and a copy of the application was also sent to his office, as it is evident from the application itself.

When the aforesaid 25 workers had been absent from work for more than 10 consecutive days without taking leave, on 23.06.2019 the Company sent a notice by registered post (*hereinafter referred to as First Notice*) to each of the 25 workers by directing him to join work without delay and asking to show cause why he had been absent from work for more than 10 consecutive days without taking leave from or giving notice to the concerned authority of the Company. The First Notice also stated that the Company would take legal actions against the absentee if he failed to join work or explain the causes of his absence within 10 days of the service of the notice. But, unfortunately none of the 25 workers joined work or showed cause for his absence within 10 days of the service of the First Notice.

Subsequently, on 04.07.2019 the Company sent another notice by registered post (*hereinafter referred to as Second Notice*) to each of the 25 workers by stating that the Company directs him/his to joint work and show cause for his absence within 7 days of the receipt of the notice. The Second Notice also stated that the worker's failure to join work or show cause for his absence without leave or permission within 7 days of the receipt of the notice would be regarded as his wilful resignation from service. Unfortunately, none of the 25 workers joined work or showed cause for his absence within 7 days of the receipt of the Second Notice.

Later on 13.07.19, the Company sent another notice by registered post (*hereinafter referred to as Third Notice*) to each of the 25 workers by stating that his failure to join work or show cause for his absence without leave within 7 (seven) days of receipt of the Second Notice had been regarded as his wilful resignation from service on 13.06.2019 as per Section 27(3A) of the Bangladesh Labour Act, 2006. By the same notice, the Company also requested each of the 25 absentees to take his due (if any) from the company on any working day when the factory is open.

Thereafter, on 21.10.2019, one of the 25 absentees namely Md. Bashar Ahmed in co-operation of the General Secretary of Bangladesh Garments and Industrial Workers Federation sent a letter to the Company by stating that he was entitled to get the bus service as before and salaries for the days he was absent from work after the cancellation of the bus service. He also requested the Company to resume the bus service and thereafter, to permit him to join work.

As far as your query is concerned if the account can be maintained by only one of the partners will be answered duly with the relevant laws of the land.

Our Opinion**(a) Whether the company is bound to provide transport facility (bus service) to the said 25 workers—**

Under the prevailing laws governing rights of the workers in Bangladesh especially our Labour Act, 2006 do not provide any mandatory provision for the employers i.e. owner side to provide transport facility to the workers. In addition, the policy of your company also does not contain any mandatory provision for providing transport facility to the workers. Moreover, the appointment letter of each of said 25 workers does not say anything about providing vehicle facility to the workers.

Under that perspective, some of workers of your company cannot claim car facility as of their right. The said 25 workers are a very nominal number of workers of your company out of a vast number of workers who are working for your company for a long period of time. The remaining large number of workers never raised the issue of transport facility.

As such, your company is not under any legal/statutory obligation to provide or continue with the transport facility by providing bus service to the workers.

(b) Whether the company is bound to continue with transport facility to a group of its workers—

Giving transport facility to a group of workers depriving all other workers of the same facility is discriminatory. However, considering the long distance, your company did not stop providing transport facility to said 25 workers while you stopped transport facility for all others long ago. On the vehement request of said 25 workers, you continued to provide transport facility to them for a couple of months on the basis of the mutual negotiation of both the parties.

Thereafter, providing clear notices to the said 25 workers your company stopped providing transport facility to them which is not barred by any law. Since there were clear notices from your part to the workers, therefore there is no violation of the principles of natural justice by you.

Under the circumstances, the decision and action of your company can to stop transport facility to the said 25 workers are not illegal or violative of any laws of Bangladesh.

(c) Whether removal from the service for intentional absence for more than 10 days without taking leave or permission is legal—

Section 27(3A) of the Labour Act, 2006 provides that if a worker remains absent from his work place for more than 10 (ten) days without notice or permission, the employer shall serve him a notice to explain the reason of his absent and join the service within 10 (ten) days. And, if the worker does not submit any written explanation or join the service within 10 days, the employer shall give him further 7 (seven) days to defend himself. In such case, if the worker does not join the service or defend himself within such 7 days, he shall be deemed to have resigned from service on and from the date of such absence. Section 27(3A) of the Labour Act, 2006 is quoted verbatim below:

“Notwithstanding anything contained in sub-section (3), if a worker remains absent from his work place for more than 10 (ten) days without notice or permission, the employer shall serve him a notice to explain the reason of his absent and join the service within 10 (ten) days and, in such case, if the worker does not submit any written explanation or join

the service within the stipulated time, the employer shall give him further 7 (seven) days time to defend himself, and thereupon if the worker does not join the service or defend himself, he shall be deemed to have resigned from service on and from the date of such absence.”

From the facts mentioned above under clause 2, it is evident that the Company, when the 25 workers were absent from work for more than 10 days without leave or permission, sent the first notice on 23.06.2019 and the second notice on 13.07.2019 in compliance with the provision of 27(3A) of the Labour Act, 2006. So, as per section 27(3A) of the Labour Act, 2006, the 25 workers shall be deemed to have resigned from their jobs from 13.06.2019 from which date the 25 workers have kept themselves absent from work till date.

Moreover, Clause 9 of the appointment letters of the workers provide that if a worker keeps himself absent from work for more than 10 days without leave or permission from the concerned authority of the company, such absence shall be regarded as willful retirement from job and absence. For ready reference Clause 9 is quoted below in original language :

“কোন প্রকার অনুমতি ছাড়া পরপর ১০ দিনের বেশি অনুপস্থিত থাকিলে আপনি স্বেচ্ছায় চাকুরী হইতে ইস্তফা দিয়াছেন বলিয়া গণ্য হইবে এবং স্বাভাবিক ভাবে এই নিয়োগ পত্র অনুপস্থিতির দিন হইতে বাতিল বলিয়া গণ্য হইবে।”

Also, Section 23(4) of the Labour Act, 2006 provides that absence without leave for more than 10 days shall be treated as misconduct. Section 23(1) of the Act, 2006 provides that a worker may be dismissed without prior notice or pay in lieu thereof if he is found guilty of misconduct under section 24. For ready reference, section 23(1) is quoted verbatim:

“Notwithstanding anything contained as to lay-off, retrenchment, discharge and termination of service elsewhere in this Act, a worker may be dismissed without a notice or without wages in lieu of a notice if he is—

- (a) convicted of any criminal offence; or
- (b) found guilty of misconduct under section 24. “

Conclusion

In the aforesaid factual and legal position, it can be concluded that the long intentional absence of said 25 workers from their service without prior permission or leave of the employer/management authority and their non-response to your notices falls under the provision of “misconduct” and “wilful/voluntary termination of job”. Therefore, you are not bound to give them any wages/salaries for their absent period. Still, if you want, you may give them two months gross or basic wages by taking letter of undertaking with a forwarding containing their acknowledgement of wilful resignation/termination from job and not to file any case/suit against the Company for harassment or anything.

Thanks for seeking our opinion. Feel free to contact us anytime for any kind of query.

Sincerely,

(Shahadat Hossain)

Advocate, Supreme Court of Bangladesh.

SampleLegal Opinion**Legal Opinion regarding 6740 decimals of Land, Plot Nos. 316A and 316B.****1. Documents perused :**

Photocopies of the Lease Deed No. 6881 dated 21.05.1953, Lease Deed No. 6883 dated 26.05.1953, Dhaka City Jarip, Land Development Tax Receipt, DNCC Holding Tax Receipt, Letter of Ministry of Housing and Public Works regarding the transfer of 95% shares of previous directors of Bangla Industrial Trading Co. Ltd., Letter of Ministry of Housing and Public Works regarding transforming Bangla Industrial Co. in to Bangla Industrial Co. Limited, Certificate of Incorporation, Allotment Letter No. 742 dated 09.05.1953, Certificate of Handing Over and Taking Over Possession of Plots.

2. Chain of Ownership/Title :

Two properties are involved here, one land being Plot No. 316A, Tejgaon Industrial Area, District- Dhaka, P.S. Tejgaon, Dhaka and another being Plot No. 316B, Tejgaon Industrial Area, District- Dhaka, P.S. Tejgaon, Dhaka.

As per the Allotment Letter vide Memo No. 742 dated 09.05.1953 Plot No. 316A was allotted in the name of Messrs. Pakistan Trading Co. of 78, Moulvi Bazar, Dacca. Although the Allotment Letter vide Memo No. 742 dated 09.05.1953 shows that only Plot No. 316A was allotted in the name of Messrs Pakistan Trading Co. of 78, Moulvi Bazar, Dacca. However, the Certificate of Handing Over and Taking Over Possession of Plots shows that Plot Nos. 316A and 316B were handed over to the Pakistan Trading Co. and thereby taken possession of on 15.09.1953. It means that the allotment letter for Plot No. 316B is not given to us; you are requested to collect the same.

The Indenture of Lease Agreement No. 6881 dated 21.05.1953 between the Governor of East Bengal (Lessor) and the said Pakistan Trading Co. (Lessee) shows that the Lessor owned the 16 annas and was in exclusive possession of the piece or parcel of land measuring one-third of an acre situated in the Tejgaon Industrial area, District- Dacca, P.S. Tejgaon, Plot No. 316A.

Likewise the Indenture of Lease Agreement No. 6883 dated 26.05.1953 between the Governor of East Bengal (Lessor) and the said Pakistan Trading Co. (Lessee) shows that the Lessor owned the 16 annas and was in exclusive possession of the piece or parcel of land measuring one-third of an acre situated in the Tejgaon Industrial area, District- Dacca, P.S. Tejgaon, Plot No. 316B.

Subsequently Bangla Industrial Trading Co. Ltd. was incorporated on 20.06.1973 vide the issuance of Certificate of Incorporation. It is apparent in the R.S Khatian that since its incorporation Bangla Industrial Trading Co. Ltd. of 78, Moulvi Bazar, Dhaka is mentioned as the owner/lessee along with the Dag No. 779 (old)/2004 (new). According to the Khatian the plot is used for a factory and the land measures 6740 decimals.

In the Dhaka City Jarip the owner's name is mentioned as Bangladesh Industrial Trading Co. of 78, Moulvi Bazar, Dhaka and Daag No. 2309 having a factory in a 2 storied building in the plot measuring 6780 decimal. Also in the Namjari Porcha the name of Bangla Industrial Co. Ltd. of 78, Moulvi Bazar, Dhaka is mentioned as the owner/lessee of land measuring 6740 decimals.

A Letter of Ministry of Housing and Public Works dated 23.05.1987 it shows that Bangla Industrial Co. was transformed into Bangla Industrial Co. Limited. Thereafter, in the letter

regarding the Namjari dated 07.07.1987 the name of Bangla Industrial Co. Ltd. shows to be registered for both the plots 316A and 316B.

Letter of Ministry of Housing and Public Works dated 14.05.2005 ascertains the transfer of 95% shares of previous directors of Bangla Industrial Trading Co. Ltd. to the new directors as mentioned in the said letter.

The Land Development Tax Receipt dated 22.05.2019 shows the name of Bangla Industrial Trading Co. Ltd. paid Tk. 60,638/- only for lands measuring 66 decimal in Dag Nos. 316A and 316B. Also from the DNCC Holding Tax Receipt it appears that Bangla Industrial Trading Co. Ltd. paid Tk. 18731/- only on 30.05.2019.

However, it is pertinent to mention that the transfer/transformation documents validating the transform of Messers Pakistan Trading Co. to Bangla Industrial Trading Co. Ltd. were not given to us. Nevertheless, it seems likely that Pakistan Trading Co. of 78, Moulvi Bazar, Dacca upon which the original lease was granted later transformed into Bangla Industrial Trading Co. Ltd. of 78, Moulvi Bazar, Dhaka having the same address.

3. Opinion:

The title regarding two properties involved here, one land being Plot No. 316A, Tejgaon Industrial Area, District- Dhaka, P.S. Tejgaon, Dhaka and another being Plot No. 316B, Tejgaon Industrial Area, District- Dhaka, P.S. Tejgaon, Dhaka are clear and proper, and in Dhaka City Jarip the land is recorded in the name of the latest owner and possessor of said land namely, Bangla Industrial Trading Co. Ltd. The Governor of East Bengal leased the land/plot Nos. 316A and 316B to the Pakistan Trading Co. Ltd. of 78, Moulvi Bazar, Dacca. However later it appears that the leases of the plots were held by Bangla Industrial Trading Co. Ltd. of 78, Moulvi Bazar, Dhaka. Also the RS Khatian, Dhaka City Jarip, Rent/Tax receipts show the name of Bangla Industrial Trading Co. Ltd.

After perusing all the documents it seems likely that Pakistan Trading Co. of 78, Moulvi Bazar, Dacca upon which the original lease was granted, later transformed into Bangla Industrial Trading Co. Ltd. of 78, Moulvi Bazar, Dhaka. Though there is no document presented before us which can validate such transformation. However it can be deducted from the address mentioned in the lease agreements for plot Nos. 316A and 316B under the name of the Lessee is indifferent in all the other documents that are perused. Both the addresses of Pakistan Trading Co. Ltd and Bangla Industrial Trading Co. Ltd. are same.

Under these circumstances the schedule property can be purchased; if there is no other pending litigation or any other encumbrances in the schedule land. For clarifying of this issue it is needed to collect Clearance Certificate/নির্দায় সনদপত্র from Sub-Registry Office. Before purchase it is also necessary to examine original documents.

4. Wanting:

- Allotment letter for Plot No. 316B.
- All transfer/transformation documents from Messers Pakistan Trading Co. to Bangla Industrial Trading Co. Ltd.
- Other copies of recent bills (electric, gas, water).

Opined by:

(Zarif Kabir)

Advocate, Supreme Court of Bangladesh.

Date : 04.08.2019.

Sample

B & W/UCBL/2019

November 04, 2019

To,

The Manager,

Ultimate Commercial Bank Limited

South Brook Hall Road Branch

84, South Brook Hall Road

Bangla Bazar (1st Floor)

Dhaka-1100

Subject : Legal Opinion upon vetting of property documents in the name of Md. Golam Hafiz, a client of Ultimate Commercial Bank Limited, South Brook Hall Road Branch, Dhaka

Dear Sir,

Please refer to your instruction on the subject mentioned above. We have perused and examined the paper(s)/document(s) referred to us meticulously and our findings are as follows:

1.	Owner of the properties	Md. Golam Hafiz , son of Md. Golam Sattar and Most. Halima Khatun, Present Address- House No. 529, Sadhapur, Post Office- Nogorkondha, Police Station- Savar, District- Dhaka, NID No- 5518821912, Date of Birth- 01.02.1976, By faith – Muslim, By Profession: Business, Nationality: Bangladeshi by Birth.
2.	Description of the properties :	<p>In respect of property of Irrevocable Power Attorney Deed No. 14747 dated 26.09.2018</p> <p style="text-align: center;"><u>Schedule-I</u></p> <p>All that piece and parcel of land measuring an area of 34.50 (Thirty Four point Five Zero) decimals situated under District- Dhaka, Police Station- Savar, Sub-Registry Office – Savar, Dhaka, Mouza – Sadhapur, J.L. Nos. C.S.692, S.A. 207, R.S 194, Khatian Nos. C.S. Khatian No. 297, S.A. Khatian Nos. 618 and 807, R.S Khatian Nos. 303 and 314, Mutation Khatian Nos. 5718, 5715 and 5717, Jote Nos. 5717, 5714 and 5716, C. S. & S. A. Plot Nos. 232, 234, 230 and 236, R.S. Plot Nos. 882, 884, 910 and 890.</p>

			<p style="text-align: center;"><u>Schedule-II</u></p> <p>All that piece and parcel of land measuring an area of 11.57 (Eleven Point Five Seven) decimals situated under District- Dhaka, Police Station- Savar, Sub-Registry Office- Savar, Dhaka, Mouza- Kumaron, J.L. Nos. C.S.749, S.A. 267, R.S. 240, Khatian Nos. C.S. Khatian No. 112 and 81/1, S.A. Khatian Nos. 80 and 70, R.S Khatian Nos. 36 and 57, Mutation Khatian No. 577, Jote No. 576, C. S. & S. A. Plot Nos. 50 and 13, R.S. Plot Nos. 08 and 33.</p>
3.	Quantum of space/land	:	Total land measuring an area of $(34.50+11.57) = \mathbf{46.07}$ (Forty Six point Zero Seven) decimals.
4.	Title Deeds Referred	:	<p>Submitted Photocopy of certified Irrevocable Power Of Attorney Deed No. 14747 dated 26.09.2018 registered with Savar Sub Registry Office, Dhaka, executed by Md. Golam Hafiz, son of Md. Golam Sattar in favour of Abdullah Al Mamun, son of A. Rob Deowan.</p> <p>Submitted Photocopy of certified Sale Deed No. 4541 dated 13.03.2014 registered with Savar Sub Registry Office, Dhaka, executed by 1) Md. Ludu Miah, son of late Md. Kala Chan Miah through his attorney Md. Romiz Uddin, son of late Nizam Uddin and 2) Md. Nobil Chan, son of late Kitab Ali through his attorney Md. Montazur Rahman, son of late Md. Kamal Uddin, in favour of Md. Golam Hafiz, son of Md. Golam Sattar.</p> <p>Submitted Photocopy of certified Sale Deed No. 4544 dated 13.03.2014 registered with Savar Sub Registry Office, Dhaka, executed by 1) Md. Ochimuddin Mia, son of late Muktal Hossain alias Mokthar Hosen, 2) Md. Ballu Chan, 3) Md. Bala Chan, 4) Md. Jahangir, 5) Md. Alamgir, all are sons of late Ibrahim Mia, 6) Most. Tajeda Begum, 7) Most. Majeda Begum, both are daughter of late Ibrahim Mia, 8) Mollika Banu, wife of Ibrahim Mia through their attorney 1) Md. Nuruzzaman, son of late Kamal Uddin and 2) Md. Shoriful Islam, son of Hazi Md. Nozrul Islam in favour of Md. Golam Hafiz, son of Md. Golam Sattar.</p> <p>Submitted Photocopy of certified Sale Deed No. 4545 dated 13.03.2014 registered with Savar Sub Registry Office, Dhaka, executed by 1) Md. Ballu Chan, 2) Md. Bala Chan, 3) Md. Jahangir, 4) Md. Alamgir, all are sons of late Ibrahim Mia, 5) Most. Tajeda Begum, 6) Most. Majeda Begum, both are daughter of late Ibrahim Mia, 7) Mollika Banu, wife of Ibrahim Mia, 8) Mosammat Rahema Khatun, wife of Ballu Chan in favour of Md. Golam Hafiz, son of Md. Golam Sattar.</p>

			Submitted Photocopy of certified Sale Deed No. 4543 dated 13.03.2014 registered with Savar Sub Registry Office, Dhaka, executed by 1) Mosammat Komola Khatun, wife of Chola Munshi, 2) Akkas Ali, 3) Almas Miah, 4) Abu Kalam, all are sons of late Alimuddin Shikdher 5) Fatema Akter, wife of Md. Mansur Mia, through their attorney Md. Nuruzzaman, son of late Kamal Uddin in favour of Md. Golam Hafiz , son of Md. Golam Sattar.
5.	Bia Deeds	:	<p>In respect of property of Sale Deed No. 4541 dated 13.03.2014 Submitted Photocopy of certified Power of Attorney Deed No. 6943 dated 20.03.2012 registered with Savar Sub Registry Office, Dhaka, executed by Md. Ludu Mia, son of late Md. Kala Chan Mia in favour of Md. Ramij Uddin, son of late Nijam Uddin.</p> <p>Submitted Photocopy of certified Power of Attorney Deed No. 18955 dated 19.07.2012 registered with Savar Sub Registry Office, Dhaka, executed by Md. Nobi Chan, son of late Kitab Ali in favour of Md. Montazur Rahman, son of late Md. Kamal Uddin.</p> <p>In respect of property of Sale Deed No. 4544 dated 13.03.2014 Submitted Photocopy of certified Power of Attorney Deed No. 8571 dated 05.04.2012 registered with Savar Sub Registry Office, Dhaka, executed by 1) Md. Ochimuddin Mia, son of late Muktal Hossain alias Mokthar Hosen, 2) Md. Ballu Chan, 3) Md. Bala Chan, 4) Md. Jahangir, 5) Md. Alamgir, all are sons of late Ibrahim Mia, 6) Mst. Tajeda Begum, 7) Mst. Majeda Begum, both are daughters of late Ibrahim Mia, 8) Mollika Banu, wife of Ibrahim Mia in favour of 1) Md. Nuruzzaman, son of late Kamal Uddin and 2) Md. Shoriful Islam, son of Hazi Md. Nozrul Islam.</p> <p>In respect of property of Sale Deed No. 4545 dated 13.03.2014 Submitted Photocopy of certified Sale Deed No. 7584 dated 21.04.2004 registered with Savar Sub Registry Office, Dhaka, executed by Md. Lubdho Mia, son of late Md. Kala Chan in favour of Md. Ballu Chan, son of late Md. Ibrahim Mia.</p> <p>Submitted Photocopy of original Power of Attorney Deed No. 20994 dated 11.06.2009 registered with Savar Sub Registry Office, Dhaka, executed by Md. Ikbal Hossain, son of Md. Shahidullah in favour of Md. Shahidullah, son of late Din Mohammad.</p> <p>Submitted Photocopy of original Sale Deed No. 32673 dated 12.10.2010 registered with Savar Sub Registry Office, Dhaka, executed by Md. Ikbal Hossain, son of Md. Shahidullah through his attorney Md. Shahidullah, son of late Din Mohammad in favour of 1) Md. Akter Hossain, son of Hazi Ali Ahammed, 2) Md. Tara Mia, son of late Md. Falu Mia, 3) Md. Abdul Karim, son of Md. Kerani Mia and 4) Hazi Md. Julmot Mia, son of Md. Saheb Ali.</p>

		<p>Submitted Photocopy of certified Sale Deed No. 29769 dated 17.12.2012 registered with Savar Sub Registry Office, Dhaka, executed by 1) Md. Shahidullah, son of late Din Mohammad, 2) Md. Akter Hossain, son of Hazi Ali Ahmed, 3) Md. Tara Mia, son of late Md. Kalu Mia, 4) Md. Abdul Karim, son of Md. Kerali Mia and 5) Hazi Md. Julmot Mia, son of Hazi Md. Saheb Ali in favour of 1) Md. Lubdho Mia, son of late Md. Kala Chan, 2) Md. Abdur Rahman, son of late Md. Kala Chan, 3) Md. Dudu Mia, son of late Md. Chan Mia, 4) Md. Kala Chan Mia, son of late Md. Ibrahim Mia, 5) Mohammad Ali, son of Md. Ilim Chan, 6) Md. Saroj Mia, 7) Md. Abdul Awal, 8) Md. Ochim Uddin, 9) Md. Kuti Mia, 10) Md. Sapon Mia, all are sons of late Mokter Hossain.</p> <p>In respect of property of Sale Deed No. 4543 dated 13.03.2014 Submitted Photocopy of original Power of Attorney Deed No. 16964 dated 24.07.2011 registered with Savar Sub Registry Office, Dhaka, executed by 1) Mosammot Komola Khatun, wife of Chola Munshi, 2) Akkas Ali, 3) Almas Mia and 4) Abu Kalam, all are sons of late Alimuddin Shikdher 5) Fatema Akter, wife of Md. Mansur Mia, in favour of Md. Shahidullah, son of late Din Mohammad.</p>
6.	Mutation	<p>In respect of property of Sale Deed No. 4541 dated 13.03.2014 Submitted photocopy of Mutation Khatian No. 5715 with duplicate carbon receipt (DCR) being Book No. C 14163 and page no. 14 confirming mutation of the land measuring an area of 9.25 decimal pertaining to Plot Nos. 882 and 884 as per R.S. operation in the name of Md. Golam Hafiz, son of Md. Golam Sattar, <i>vide</i> Mutation and Separation Case No. 2424/13-14 dated 24.06.2014.</p> <p>In respect of property of Sale Deed No. 4544 dated 13.03.2014 Submitted photocopy of Mutation Khatian No. 5717 with duplicate carbon receipt (DCR) being Book No. C 14163 and page no. 15 confirming mutation of the land measuring an area of 10 decimal pertaining to Plot Nos. 882 and 884 as per R.S. operation in the name of Md. Golam Hafiz, son of Md. Golam Sattar, <i>vide</i> Mutation and Separation Case No. 2423/13-14 dated 24.06.2014.</p> <p>In respect of property of Sale Deed No. 4545 dated 13.03.2014 Submitted photocopy of Mutation Khatian No. 5718 with duplicate carbon receipt (DCR) being Book No. C 14163 and page no. 22 confirming mutation of the land measuring an area of 15.25 decimal pertaining to Plot Nos. 882, 884, 910 and 890 as per R.S. operation in the name of Md. Golam Hafiz, son of Md. Golam Sattar, <i>vide</i> Mutation and Separation Case No. 2425/13-14 dated 24.06.2014.</p>

			<p>In respect of property of Sale Deed No. 4543 dated 13.03.2014</p> <p>Submitted photocopy of Mutation Khatian No. 577 with duplicate carbon receipt (DCR) being Book No. C 14163 and page no. 13 confirming mutation of the land measuring an area of 11.57 decimal pertaining to Plot Nos. 8 and 33 as per R.S. operation in the name of Md. Golam Hafiz, son of Md. Golam Sattar, <i>vide</i> Mutation and Separation Case No. 2422/13-14 dated 24.06.2014.</p>
7.	Khatian(s)	:	<p>Submitted Photocopy of certified C.S. Khatian Nos. 297, 112 and 81/1 corresponding with plot nos. 232, 234, 230, 236, 50 and 13 land measuring 7 acre 61 decimals.</p> <p>Submitted Photocopy of certified S.A. Khatian Nos. 618, 807, 80 and 70 corresponding with plot nos. 232, 234, 230, 236, 50 and 13 land measuring 7 acre 61 decimals.</p> <p>Submitted Photocopy of certified R.S. Khatian Nos. 303, 314, 36 and 57 corresponding with plot nos. 882, 884, 910, 890, 8 and 33 land measuring 8 acre 12 decimals.</p>
8.	Chain of Ownership	:	<p>In respect of property of Sale Deed No. 4541 dated 13.03.2014</p> <p>It appears that, Ain Uddin was the R.S. recorded owner of the schedule property.</p> <p>Later on, being acquired the property, said Ain Uddin died living behind a son namely Md. Kala Chan Miah.</p> <p>Later on, being acquired the property by way of inheritance and mutated his name in S.A and R.S. Khatian successfully, said Md. Kala Chan Miah, son of Ain Uddin died living behind a son namely Md. Ludu Miah.</p> <p>Later on, said Ludu Miah, son of Md. Kala Chan Miah acquired the property by way of inheritance and mutated his name in Mutation Khatian successfully.</p> <p>On the other hand, Sadhu Mia was the R.S. recorded owner of the schedule property.</p> <p>Later on, being acquired the property, said Sadhu Mia died living behind a son namely Kitab Ali.</p> <p>Later on, said Kitab Ali, son of Sadhu Mia acquired the property by way of inheritance and mutated his name in S.A Khatian successfully and died living behind a son namely Md. Nobi Chan.</p> <p>Later on, said Md. Nobi Chan, son of Kitab Ali acquired the property by way of inheritance and mutated his name in Mutation Khatian successfully.</p> <p>Later on, said Md. Ludu Miah, son of Late Md. Kala Chan Miah appointed Md. Romij Uddin, son of Late Nijam Uddin as his Attorney <i>vide</i> Power of Attorney Deed No. 6943 dated 20.03.2012.</p>

		<p>Later on, said Md. Nobi Chan, son of Late Kitab Ali appointed Md. Montazur Rahman, son of Late Md. Kamal Uddin as his Attorney <i>vide</i> Power of Attorney Deed No. 18955 dated 19.07.2012.</p> <p>Afterwards, being acquired the property by way of inheritance, said Md. Ludu Miah, son of Late Md. Kala Chan Miah and Md. Nobi Chan, son of Late Kitab Ali through their attorney Md. Romij Uddin, son of Late Nijam Uddin and Md. Montazur Rahman, son of Late Md. Kamal Uddin transferred the whole property <i>vide</i> Sale Deed No. 4541 dated 13.03.2014 in favour of Md. Golam Hafiz, son of Golam Sattar.</p> <p>In respect of property of Sale Deed No. 4544 dated 13.03.2014</p> <p>It appears that, Muktal Hossain alias Mukter Hossain and Md. Kala Chan were the S.A. and R.S. recorded owners of the schedule property.</p> <p>Later on, being acquired the property, said Muktal Hossain alias Mukter Hossain died living behind a son namely Md. Ochim Uddin Miah as his legal heir.</p> <p>On the other hand, said Kala Chan died living behind his sons namely Md. Ballu Chan, Md. Bala Chan, Md. Jahangir, Md. Alamgir and daughters namely Most. Tajeda Begum, Most. Majeda Begum and wife namely Molika Banu.</p> <p>Later on, said 1) Md. Ochim Uddin Miah, son of Late Muktal Hossain alias Mukter Hossain and 2) Md. Ballu Chan, 3) Md. Bala Chan, 4) Md. Jahangir, 5) Md. Alamgir, all are sons of late Kala Chan and 6) Most. Tajeda Begum, 7) Most. Majeda Begum, both are daughters of Late Kala Chan and 8) Mollika Banu, wife of late Kala Chan appointed Md. Nuruzzaman, son of Late Kamal Uddin and Md. Shariful Islam, son of Haji Md. Nazrul Islam as their Attorney <i>vide</i> Power of Attorney Deed No. 8571 dated 05.04.2012.</p> <p>Afterwards, being acquired the property by way of inheritance, said 1) Md. Ochim Uddin Miah, son of Late Muktal Hossain alias Mukter Hossain and 2) Md. Ballu Chan, 3) Md. Bala Chan, 4) Md. Jahangir, 5) Md. Alamgir, all are sons of late Kala Chan and 6) Most. Tajeda Begum, 7) Most. Majeda Begum, both are daughters of Late Kala Chan and 8) Mollika Banu, wife of Late Kala Chan through their Attorney Md. Nuruzzaman, son of Late Kamal Uddin and Md. Shariful Islam, son of Haji Md. Nazrul Islam transferred the schedule property <i>vide</i> Sale Deed No. 4544 dated 13.03.2014 in favour Md. Golam Hafiz, son of Golam Sattar.</p>
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		<p>In respect of property of Sale Deed No. 4545 dated 13.03.2014</p> <p>It appears that Md. Kala Chan was the S.A. and R.S. recorded owner of the schedule property.</p> <p>Later on, being acquired the property, said Md. Kala Chan died living behind his sons namely Md. Ibrahim Miah, Ilim Chan, A. Rahman, Buddu Miah, Loddu Miah, Dudu Miah and daughters namely Golap Banu, Shohag Banu, Shukur Banu and wife namely Khairun Nessa as his legal heirs.</p> <p>Later on, being acquired the property by way of inheritance, said Md. Ibrahim Miah, son of Late Md. Kala Chan, died living behind his sons namely Md. Ballu Chan, Md. Bala Chan, Md. Jahangir, Md. Alamgir and daughters namely Most. Tajeda Begum, Most. Majeda Begum and wife namely Molika Banu as his legal heirs.</p> <p>Later on, said 1) Md. Ballu Chan, 2) Md. Bala Chan, 3) Md. Jahangir, 4) Md. Alamgir, all are sons of Late Md. Ibrahim Miah, 5) Most. Tajeda Begum, 6) Most. Majeda Begum, both are daughters of Late Md. Ibrahim Miah and 7) Mollika Banu, wife of Late Md. Ibrahim Miah acquired the property by way of inheritance and mutated their name in the Mutation successfully.</p> <p>On the other hand, being acquired the property by way of inheritance, said Loddu Miah, son of Late Md. Kala Chan transferred his portion of the property <i>vide</i> Sale Deed No. 7584 dated 21.04.2004 in favour of Md. Ballu Chan, son of Late Md. Ibrahim Miah and Mosammot Rahema Khatun, wife of Md. Ballu Chan.</p> <p>On the other hand, it appears that Md. Moli Mia, son of Late Zahir Ali, was the S.A. and R.S. recorded owner of some portion of the schedule property.</p> <p>Later on, being acquired the property, said Md. Moli Mia, son of Late Zahir Ali, died leaving behind his wife Saburon Nesa and his sons namely Md. Solim Mia, Md. Khalil Mia, Md. Saroj Mia and his daughters namely Sahadon Nesa, Jhibon Banu, Champa Banu, Setara Banu, Banesa Banu as his legal heirs.</p> <p>Later on, being acquired the property by way of inheritance, said Saburon Nesa, wife of Late Md. Moli Mia, died leaving behind her sons namely Md. Solim Mia, Md. Khalil Mia, Md. Saroj Mia and her daughters namely Sahadon Nesa, Jhibon Banu, Champa Banu, Setara Banu, Banesa Banu as her legal heirs.</p> <p>Later on, said Banesa Banu, daughter of Late Md. Moli Mia and Late Saburon Nesa, died leaving behind her husband Md. Shohidullah and her sons Md. Ikbal Hossain & the other and her two daughters as her legal heirs.</p>
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		<p>Later on, being acquired the property by way of inheritance, said Md. Iqbal Hossain, son of Md. Shahid Ullah appointed his father Md. Shahid Ullah, son of late Din Mohammad as his Attorney <i>vide</i> Power of Attorney Deed No. 20994 dated 11.06.2009.</p> <p>Later on, being acquired the property by way of inheritance, said Md. Iqbal Hossain, son of Md. Shahid Ullah through his Attorney Md. Shahid Ullah, son of Late Din Mohammad transferred the property <i>vide</i> Sale Deed No. 32673 dated 12.10.2010 in favour of 1) Md. Akter Hossain, son of Hazi Ali Ahmed, 2) Tara Mia, son of late Kalu Mia, 3) Md. Abdul Karim, son of Md. Kerali Mia, 4) Hazi Md. Julmot Mia, son of Hazi Md. Saheb Ali.</p> <p>Later on, being acquired the property by way of purchase, said 1) Md. Shahid Ullah, son of Late Din Mohammad, 2) Md. Akter Hossain, son of Hazi Ali Ahmed, 3) Md. Tara Mia, son of Late Md. Kalu Mia, 4) Md. Abdul Karim, son of Md. Kerali Mia, 5) Hazi Md. Julmot Mia, son of Hazi Md. Saheb Ali transferred the portion of their property <i>vide</i> Sale Deed No. 29769 dated 17.12.2012 in favour of 1) Md. Buddu Mia, 2) Md. Abdur Rahman, 3) Md. Dudu Mia, all are sons of late Kala Chan, 4) Bala Chan, son of Late Md. Ibrahim Mia, 5) Mohammad Ali, son of Ilim Chan, 6) Md. Suruj Miah, 7) Md. Abdul Awal, 8) Md. Ochim Uddin, 9) Md. Kuti Mia, 10) Md. Shapon Mia, all are sons of Late Mukter Hossain.</p> <p>Afterwards, said 1) Md. Ballu Chan, 2) Md. Bala Chan, 3) Md. Jahangir and 4) Md. Alamgir, all are sons of Late Kala Chan, 5) Most. Tajeda Begum and 6) Most. Majeda Begum, both are daughters of Late Kala Chan, 7) Mollika Banu, wife of Late Kala Chan acquired the property by way of inheritance.</p> <p>Besides, said Md. Ballu Chan, son of Late Md. Ibrahim Mia and Mosammot Rahema Khatun, wife of Md. Ballu Chan acquired the property by way of purchase from Loddu Miah, son of Late Md. Kala Chan.</p> <p>In addition, said Bala Chan, son of Late Md. Ibrahim Mia acquired the property by way of purchase from 1) Md. Shahid Ullah, son of Late Din Mohammad, 2) Md. Akter Hossain, son of Hazi Ali Ahmed, 3) Md. Tara Mia, son of Late Md. Kalu Mia, 4) Md. Abdul Karim, son of Md. Kerali Mia, 5) Hazi Md. Julmot Mia, son of Hazi Md. Saheb Ali.</p> <p>Later on, being acquired the property by way of inheritance and purchase, said 1) Md. Ballu Chan, 2) Md. Bala Chan, 3) Md. Jahangir, 4) Md. Alamgir, all are sons of Late Kala Chan, 5) Most. Tajeda Begum, 6) Most. Majeda Begum, both are daughters of Late</p>
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		<p>Kala Chan, 7) Mollika Banu, wife of Late Kala Chan, 8) Mossamat Rahema Khatun, wife of Md. Ballu Chan transferred their portion of the property <i>vide</i> Sale Deed No.4545 dated 13.03.2014 in favour Md. Golam Hafiz, son of Golam Sattar.</p> <p>In respect of property of Sale Deed No. 4543 dated 13.03.2014</p> <p>It appears that Pokai Mia, son of Late Babur Ali, was the R.S. recorded owner of the schedule property.</p> <p>Later on, being acquired the property, said Pokai Mia died living behind his daughters 1) Komola Begum and 2) Toj Banu.</p> <p>Later on, being acquired the property, said Toj Banu, daughter of Pokai Mia died living behind his sons namely Akkas Ali, Almas Mia, Abu Kalam and a daughter namely Fatema Akter as her legal heirs.</p> <p>Later on, being acquired the property by way of inheritance, said 1) Komola Begum, daughter of Pokai Miah, 2) Akkas Ali, 3) Almas Miah, 4) Abu Kalam, all are sons of Late Toj Banu 5) Fatema Akter, daughter of Late Toj Banu appointed Md. Nuruzzaman, son of Late Kamal Uddin as their attorney <i>vide</i> Power of Attorney Deed No. 16964 Dated 24.07.2011.</p> <p>Later on, being acquired the property by way of inheritance, said 1) Komola Begum, daughter of Pokai Miah, 2) Akkas Ali, 3) Almas Miah, 4) Abu Kalam, all are sons of Late Toj Banu 5) Fatema Akter, daughter of Late Toj Banu through their attorney Md. Nuruzzaman, son of late Kamal Uddin transferred the whole property <i>vide</i> Sale Deed No.4543 dated 13.03.2014 in favour of Md. Golam Hafiz, son of Golam Sattar.</p> <p>Afterwards, said Md. Golam Hafiz, son of Golam Sattar acquired the whole property <i>vide</i> Sale Deed Nos. 4541, 4544, 4545 and 4543 all are dated 13.03.2014 and mutated his name in Mutation successfully.</p> <p>Later on, being acquired the whole property by way of purchase, said Md. Golam Hafiz, son of Golam Sattar appointed Abdullah Al Mamun as his Attorney <i>vide</i> Power of Attorney Deed No. 14747 dated 26.09.2018.</p>
9.	Ground Rent Payment Receipt :	<p>In respect of property of Sale Deed No. 4541 dated 13.03.2014</p> <p>Photocopy of Ground Rent Payment Receipt No. H 119617 dated 26.09.2018 has been submitted, wherefrom it appears that the Ground Rent has been paid up to 1425 B.S. under Jote No. 5714 for an area 0925 ajutangsha or 9.25 decimal land pertaining to Plot Nos. 882 and 884 as per R.S. operation in the name of Md. Golam Hafiz.</p>

		<p>In respect of property of Sale Deed No. 4544 dated 13.03.2014 Photocopy of Ground Rent Payment Receipt No. H 119616 dated 26.09.2018 has been submitted, wherefrom it appears that the Ground Rent has been paid up to 1425 B.S. under Jote No. 5716 for an area 1000 ajutangsha or 10 decimal land pertaining to Plot Nos. 882 and 884 as per R.S. operation in the name of Md. Golam Hafiz.</p> <p>In respect of property of Sale Deed No. 4545 dated 13.03.2014 Photocopy of Ground Rent Payment Receipt No. H 119615 dated 26.09.2018 has been submitted, wherefrom it appears that the Ground Rent has been paid up to 1425 B.S. under Jote No. 5717 for an area 1525 ajutangsha or 15.25 decimal land pertaining to Plot No. 882, 884, 910 and 890 as per R.S. operation in the name of Md. Golam Hafiz.</p> <p>In respect of property of Sale Deed No. 4543 dated 13.03.2014 Photocopy of Ground Rent Payment Receipt No. H 119618 dated 26.09.2018 has been submitted, wherefrom it appears that, the Ground Rent has been paid up to 1425 B.S. under Jote No. 576 for an area 1157 ajutangsha or 11.57 decimal land pertaining to Plot Nos. 08 and 33 as per R.S. operation in the name of Md. Golam Hafiz.</p>
10.	Others	<p>In respect of property of Sale Deed No. 4541 dated 13.03.2014 Not Submitted.</p> <p>In respect of property of Sale Deed No. 4544 dated 13.03.2014 Not Submitted.</p> <p>In respect of property of Sale Deed No. 4545 dated 13.03.2014 Submitted Warisan Sanad being Memo No.....dated 30.03.2009 issued by, Chairman, Birulia Union Parishad, Savar, Dhaka stating 1) Ibrahim, 2) Ilim Chan, 3) A. Rahman, 4) Buddho Mia, 5) Lobdho Mia, 6) Dudu Mia, 7) Golap Banu, 8) Sohag banu, 9) Shukur Banu and 10) Khoiron Nesa as legal heirs of Late Kala Chand, Son of Late Hanif Fakir alias Ain Uddin; and 1) Ballu Mia, 2) Bala Chan, 3) Jahangir, 4) Alamgir, 5) Majeda, 6) Tajeda and 7) Mollika Begum as legal heirs of Late Ibrahim, son of Late Kala Chand.</p> <p>In respect of property of Sale Deed No. 4543 dated 13.03.2014 Not Submitted.</p>
11.	Valuation	: N/A.

12.	Non-Encumbrance Certificate (NEC)	:	<p>In respect of property of Sale Deed No. 4541 dated 13.03.2014 Not Submitted.</p> <p>In respect of property of Sale Deed No. 4544 dated 13.03.2014 Submitted Non-Encumbrance Certificate (NEC) being Govt. Receipt No. 55828 dated 03.04.2014 issued by Abdul Hannan, Deed Writer and Searcher, Savar Sub-Registry Office, Dhaka, Certificate No.612, wherefrom it appears that the schedule land did not transfer to anyone in any mode.</p> <p>In respect of property of Sale Deed No. 4545 dated 13.03.2014 Not Submitted.</p> <p>In respect of property of Sale Deed No. 4543 dated 13.03.2014 Not Submitted.</p>
13.	Holding Tax Payment Receipt	:	N/A.
14.	Wanting paper(s)/document(s)	:	<ol style="list-style-type: none"> 1. Photocopy of Warisan Certificate of Kitab Ali, son of Sadu Mia. 2. Photocopy of Warisan Certificate of Muktal Hossain alias Moktar Hossain. 3. Photocopy of Warisan Certificate of late Alimuiddin Sikdher, 4. Photocopy of Warisan Certificate of late Pokai Miah @ Poka Miah, 5. Certified photocopy of C.S. Khatian No. 297 corresponding with Plot Nos. 230, 236 6. Certified photocopy of S.A Khatian No. 807 corresponding with S.A Plot No. 236 7. Certified photocopy of Non-encumbrance Certificate (NEC) 8. Updated Ground Rent Payment Receipt up to 1426 B.S.
15.	Observation	:	<p>The landowner i.e. Md. Golam Hafiz, son of Md. Golam Sattar, acquired the schedule land measuring 46.07 decimal <i>vide</i> Sale Deed Nos. 4541, 4544, 4545 and 4543, all are dated on 13.03.2014. Later on, said Md. Golam Hafiz appointed Abdullah Al Mamun as his Attorney <i>vide</i> Irrevocable Power Of Attorney Deed No. 14747 dated 26.09.2018 for the schedule land.</p>

OUR OPINION OR ADVICE

In view of the above, we are of opinion that, **Md. Golam Hafiz**, son of Md. Golam Sattar, has ‘**good**’ title of land measuring **46.07 decimal** fully described in column No. 2 above (the “Scheduled Property”) by way of Purchase. As such the landowner is required to produce the wanting paper(s)/document(s) if any particularly mentioned in column No.14 in support of his right and ownership over the Scheduled Property/Properties.

Apart from the above, we would like to draw the Bank’s kind attention to the following issues:

- # Before going to create mortgage over the scheduled property/properties, the bank is required to verify the genuineness/authenticity of submitted title/ bia deeds, C.S., S.A., & R.S. Khatians, Mutation Khatian, Khajna Dakhila etc. with the concerned Sub Registry Office, Assistant Commissioner (Land) office, Tahsil Office along with the govt. record room through proper investigation by a conversant agent of the Bank;
- # The Bank should be sanguine whether the scheduled property(s) is under any contract for sale or subject matter of any encumbrances/charges with any bank/financial institution or any litigation relating to the said property/properties pending before any competent court of law prior to creation of mortgage over the same;
- # Finally, the Bank should verify the spot physically for ascertaining the lawful possession of the landowners over the Scheduled Property(s);

Upon obtaining the papers/documents mentioned in column No. 15 above as well as fulfilment of the above recourses, the Bank can only accept the Scheduled Property(s) as security in the form of legal mortgage against the loan facility.

Please note that we have provided this opinion on the basis of the photocopies of papers and documents referred to us and for this opinion, we have assumed that:

All representations and statements made with regard to the documents by the parties are true and accurate.

This opinion is rendered only to you as our client and is solely for your benefit. No other person may rely upon it for any purpose, without our previous written consent.

The file with all photocopies of papers/documents is returned herewith.

Thanking you,

Sincerely Yours,

(Razu H. Palash)

LLB (Hons.), LLM

University of Dhaka

Advocate, Supreme Court of Bangladesh

For:- **“BLACK AND WHITE LAW HOUSE”**

CHAPTER 4

Legal/Justice Demand/Contempt Notice

Legal Notice/ Justice Demand Notice

Legal notice is not defined in law dictionaries; however notice has been defined elaborately. Black's Law Dictionary elaborately defines the term "notice" as follows—

"Information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge. Intelligence by whatever means communicated... Any fact which would put an ordinarily prudent person on inquiry.... That which imparts information to one to be notified.... Notice in its legal sense is information concerning a fact, actually communicated to a person by an authorised person, or actually derived by him from a proper person source, and is regarded in law as "actual" when the person sought to be affected by it, knows thereby of the existence of the particular fact in question.... It is knowledge of facts which would naturally lead an honest and prudent person to make inquiry, and does not necessarily mean knowledge of all the facts.... In another sense, notice means information, an advice, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate."¹

Shorter Oxford English Dictionary (Vol. 2) defines the word "notice" as "Intimation, information, intelligence, warning."² Chamber's Dictionary defines the word "notice" as under: "intimation; announcement; a formal announcement made by one of the parties to a contract of his or her intention to terminate that contract; information, especially about a future event; warning; a writing, placard, board, etc., conveying an intimation or warning; time allowed for preparation; cognizance; observation; heed; mention; a dramatic or artistic review; civility or respectful treatment; a notion, etc."³

Legal Notice or justice demand notice is served on behalf of the client (plaintiff/petitioner(s)) by a lawyer (enrolled Advocate) to the other parties (respondent(s)) before initiating a legal proceeding. Sometimes, it can be served after starting legal proceeding where requires by the circumstances. Most of the time it is served before initiating any legal proceeding for and on behalf of the client to inform the other party (generally respondent) about the complains/allegations/cause of grievances against and also to give him/her scope to settle the dispute before taking legal action against him/her. Generally, it acts as a pre-requisite to start any legal proceeding, mostly in case of taking action under civil law, because the Court may ask whether the other party was informed previously, or the other party is having any knowledge, or the other party was given any prior chance. Non-service of legal notice may lead to dismissal of

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1. Black's Law Dictionary, Centennial Edn., (1891-1991), p. 1061.
 2. The Shorter Oxford English Dictionary, Vol. II, 3rd Edn., p. 1340.
 3. Chamber's Dictionary, p. 1154.

the suit. For example : when serving of notice is a mandatory requirement in the agreement where the dispute arises out of the agreement; when the principle of natural justice requires so; in case if habeas corpus writ or writ of mandamus; etc. On the other hand, legal notice may save the client from unnecessary litigation and cost thereon. Experience shows that when parties have true intention to solve the problem, then serving notice by one party ultimately invites and gives scope to the other party to solve the dispute amicably.

Therefore, serving legal notice serves multiple effective purposes. It saves cost, prevents unnecessary or fruitless litigation, creates opportunity for amicable settlement, serves the purpose of natural justice, enhances lawyer's credibility, saves the suit/case from being dismissed/rejected on this trivial issue, etc. Legal notice and its postal receipts can be used as legal evidence. It must be served through recognized postal way. In Bangladesh post by "Registered with Acknowledge Due" (shortly Registered A/D) is the most reliable one. Service of legal notice in proper way is very important. It is not the matter whether the notice recipient receives it or not. It matters whether it has been served in legal way to the correct address addressing the proper party in proper way. In some case, serving notice is a statutory requirement, such as, proceeding under Section 138 of the Negotiable Instruments Act, or in some cases it is optional. Nevertheless, it is always better to serve legal notice in proper way.

Legal notice is simply the requirement that a party must be furnished with sufficient knowledge concerning the legal processes that affect his rights and duties or obligations. In other words, it is a way of notifying individuals or organisations about a matter by using a method required by the law courts. A legal notice, served to a defendant, must contain all the facts and complaints made in the petition. This is to inform the defendant about what he is being accused of, and he (the defendant) is given a reasonable period to answer; informing the court whether he agrees to or disagrees with the facts stated there in.⁴

There is no formal difference between legal notice or justice demand notice/notice demanding justice. It depends on the situation. In some cases, the client may use softer language, and in some cases harder. Notice demanding justice seems softer though this difference is informal one.

The following particulars may contain in a legal notice—

- Addressing the notice as legal notice/justice demand notice,
- Registered with A/D,
- Date,
- Reference, if any,
- Name, correct address and details of the party upon whom it is to be served i.e. the notice recipient,
- Name of the lawyer who is serving it i.e. notice sender,
- Name, correct address and details of the party for and on behalf whom it is serving i.e. the notice sender,
- Subject, if requires,
- A short introduction of the notice sender,

4. <<https://www.cleverism.com/lexicon/legal-notice-definition/>> (30.04.2020).

- A short description of the notice recipient(s),
- Statement of facts— chronology (precisely in clear language so that other party can understand the dispute easily and entirely),
- Statement of allegations / violations,
- Annex papers, if requires,
- Statement of cause of action / main point of grievance,
- Rights of the notice sender,
- Duty of the notice recipient(s),
- Statement regarding what the notice sender wants,
- In default by the notice recipient statement expressing clear intention of the notice sender for going to legal action,
- Time limit (reasonable time to be given),
- Reference saved for further use,
- Signature of the lawyer,
- Use office pad and seal,
- Save copy of postal receipts,
- Any other contentions as necessary.

Contempt Notice

Contempt notice is kind of legal notice or justice demand notice. It is served in violation of any Court's judgment, order or direction by the contemnor. When the other side party fails to execute, implement or comply with the Court's judgment, order or direction, then contempt notice is served on behalf of the sufferer/victim party through his/her lawyer. There should be willful disobedience or disregard of the Court's judgment, order or direction by the other side party. If the other side party is under bonafide impression or having no knowledge about the Court's judgment, order or direction, the serving of contempt notice may not be appropriate. For commission of the offence of 'contempt', the contemnor must have the knowledge of the Court's judgment, order or direction and its performance. Therefore, it is always better to serve prior intimation/notice/letter about the Court's judgment, order or direction before serving contempt notice. It also helps the other side party to obey / comply with the Court's judgment, order or direction. It saves cost, prevents unnecessary litigation, unwanted complexities and many more. It upholds the dignity of the Court. Without serving contempt notice, no proceeding of contempt can be drawn.

The following particulars may contain in a contempt notice—

- Addressing the notice as legal notice/justice demand notice,
- Registered with A/D,
- Date,
- Reference, if any,
- Name, correct address and details of the party upon whom it is to be served i.e. the notice recipient,
- Name of the lawyer who is serving it i.e. notice sender,
- Name, correct address and details of the party for and on behalf whom it is serving i.e. the notice sender,

- Subject, if requires,
- A short introduction of the notice sender,
- A short description of the notice recipient,
- Statement of facts – chronology (precisely in clear language so that other party can understand the dispute easily and entirely – mention about Court’s judgment/order/direction),
- Statement of allegations/violations of the Court’s judgment/order/direction in clear language,
- Information regarding prior intimation of the Court’s judgment/order/direction,
- Annex papers (Court’s judgment/order/direction), if requires,
- Statement of cause of action / main point of grievance,
- Rights of the notice sender,
- Duty of the notice recipient,
- Statement regarding what the notice sender wants,
- In default by the notice recipient statement expressing clear intention of the notice sender for going to legal action,
- Time limit (reasonable time to be given),
- Reference saved for further use,
- Signature of the lawyer,
- Use office pad and seal,
- Save copy of postal receipts,
- Any other contentions as necessary.

Sample

Justice Demand Notice

(Registered with A/D)

Date : 1.09.2019.

To

1. The Secretary,
Ministry of Home Affairs,
The Government of the people’s Republic of Bangladesh
Of Bangladesh Secretariate, Shahbag, Dhaka.
2. The Secretary,
Ministry of Public Administration,
The Government of the people’s Republic of Bangladesh
Of Bangladesh Secretariate, Shahbag, Dhaka.
3. The Director General,
Department of Narcotics Control
Security Services Division,
Ministry of Home Affairs,
Of 41, Segunbagicha, Dhaka-1000.

4. The Additional Director General,
Department of Narcotics Control
Security Services Division,
Ministry of Home Affairs,
Of 41, Segunbagicha, Dhaka-1000.
5. The Director (Admin)
& President
Departmental Selection/Selection Committee,
Department of Narcotics Control
Security Services Division,
Of 41, Segunbagicha, Dhaka-1000.
6. The Deputy Director (Admin)
& Member Secretary,
Departmental Selection/Selection Committee,
Department of Narcotics Control
Security Services Division,
Of 41, Segunbagicha, Dhaka-1000.
7. The Chief Accounting Officer,
Department of Narcotics Control
Security Services Division,
Ministry of Home Affairs,
Of 41, Segunbagicha, Dhaka-1000.
8. The System Analyst,
Departmental Selection/Selection Committee,
Department of Narcotics Control
Security Services Division,
Of 41, Segunbagicha, Dhaka-1000.

...**Notice Recipients.**

From:

Shahadat Hossain
Advocate, Supreme Court of Bangladesh.

For & on behalf of:

1. Rafiqul Islam Sarder,
Son of Younus Ali Sader and Mahinoor Begum,
Present and Permanent Address: Village- Horeshena,
Post Office- Kashimabad, Police Station- Gaumadi,
District- Barishal.

2. Md. Kamal Hossain
Son of late Kobbat Ali and Mst. Rijia Begum,
Present and Permanent Address: Village- Kagasura,
Post Office- Amirgonj Bazar, Police Station- Barisal Sadar (Kotwali),
District- Barishal.
3. Md. Akram Hossain
Son of Md. Jahurul Haque and Amena Begum,
Present and Permanent Address: Village- Kholkura,
Post Office-Ahmednagar, Police Station- Jhenaigati,
District- Sherpur.

(Henceforth referred to as 'our clients').

..... **Notice Senders.**

Dear Sir,

Being instructed by our aforesaid clients we are serving this legal notice upon you stating inter-alia that—

1. That our clients Rafiqul Islam Sarder, Md. Kamal Hossain and Md. Akram Hossain applied for the post of 'Driver' under the Department of Narcotics Control, Security Services Division, Ministry of Home Affairs under the circular being No. 44.04.0000.006.11.063.17-8798 dated 27.12.2017 having all required qualifications and valid licenses. The circular was for 46 posts. Admit Card for our client Rafiqul Islam Sarder was issued bearing Roll No. 15000767, for Md. Kamal Hossain bearing Roll No. 15000703 and for Md. Akram Hossain bearing Roll No. 15001509.
2. That it was mentioned in the said circular that people from all Districts can apply. According to the circular after issuing admit card to the candidates, exam was held on 20.07.2018 vide notice dated 28.06.2018. The result of examination was published on the same date i.e. 20.07.2018 confirming 536 successful candidates including our aforesaid three clients. Subsequently, after scrutinizing all the documents and licenses you the notice recipients selected total 47 candidates who are having heavy motor vehicle driving license. Our clients were amongst those 47. Thereafter, said 47 candidates including our clients were called for final examination. The final result was published on 2.12.2018 publishing the names of successful candidates including our clients. But, when the final appointment letter was published on 15.07.2019 it appeared that only names of 34 candidates were published which did not include our clients. Very unfortunately, even after qualifying all the examinations and having required qualifications, our clients were not appointed by the final appointment letter. As per the circular, there still remain 12 posts vacant, but our clients were not appointed which is ex-facie illegal, arbitrary, malafide and violation of their fundamental rights.

3. Under the circumstances, you are humbly requested to appoint our clients against the vacant posts as per the circular under your office within 7 (seven) days of this notice, otherwise we shall have no option but to take appropriate legal action against you all for securing the fundamental rights of our clients for ends of justice.

A copy of this Notice is kept in our Chamber for future reference.

Regards,

(Shahadat Hossain)

Advocate, Supreme Court of Bangladesh.

Sample

Date : 5.02.2019.

LEGAL NOTICE
(Registered with A/D)

To

1. LIM Properties Limited
Registered Office: 83 Dilkusha C/A (3rd Floor)
Dhaka.
2. Mr. M.A. Hakim,
Son of Late Md. Mafsar Uddin Hawlader
Chairman of
PFI Properties Limited
Vill & Post-Radhanagor, P.S.-Bhandaria,
Dist-Pirojpur.
3. Managing Director
PFI Properties Limited
Vill & Post-Radhanagor, P.S.-Bhandaria,
Dist-Pirojpur.

..... **Notice Recipients.**

From

Nosib Kayser

Advocate, Supreme Court of Bangladesh

For and on behalf of:

1. Qazi Hamid,
Son of Late Qazi Amanul
2. Tarana Chaudhury,
Daughter of Late Qazi Amanul and
3. Selina Khan,
Daughter of Late Qazi Amanul
All of 71, Baro Maghbazar, Dhaka.
Local Address: House No.10, Road No.12
Gulshan Model Town, Dhaka and House No.
10, Road No.12, Gulshan Model Town, Dhaka
(Henceforth referred to as 'our client')

..... **Notice Senders.**

Subject : For Amicable Settlement.

Dear Sir,

Being instructed by our aforesaid client, we are serving you this legal notice in the following manner—

1. That my clients are the owners of the land measuring 12 Katha of Plot No. 10, Block No. SW (B), Road No.12 Gulshan Model Town of Mouza Bhola Shamir, P.S.-Gulshan, Dhaka. And you the notice receiver No.1 is said Company, notice receiver Nos. 2 and 3 are Chairman and Managing Director respectively.
2. That a Deed of Agreement dated 19.07.2012 was made between my clients and you the PFI Properties Ltd. for joint venture development of a ten storied apartment building project on the property. In connection with that agreement, my clients executed an Irrevocable Power of Attorney dated 28.07.2013 in favor of you to develop the land for construction of 10 (Ten) storied residential building comprising of 16 (Sixteen) apartments and 2 (two) community rooms and car parking space on the 2 (two) basements in the building.
3. That as per clause 3 of the said Joint Venture Development Agreement, you were under obligation to pay my clients a total sum of tk. 12,00,00,000/- (Twelve Crore) as a signing money by the three equal installments of tk. 4,00,00,000/- (Four Crore), out of which the final installment of tk. 4,00,00,000/- (Four Crore) was to be given to my clients after Twelve (12) months from the day of executing the said Irrevocable of Power of Attorney in favor of you. Accordingly the said Irrevocable of Power of Attorney dated 28.07.2013 executed in your favor, as such final installment became due for payment on 28.09.2014, but you made a partial payment. You didn't pay the full amount till date which a serious breach of contract.

4. That as per clause of 4 of the said agreement, the construction was supposed to be completed within 42 months from the date of RAJUK plan approval. RAJUK plan was approved on 18.08.2015, so according to the agreement, the construction will have to be completed by 17.04.2019. Till today you have not yet to start the construction. So it is totally impossible to complete the work within the stipulated time. In the mean time, you demolished the two storied buildings and sold its materials. In the view of aforesaid circumstances, my clients will be deprived from the earnings of the rent from the apartments of our share from April, 2019.
5. That as per clause of 5 of the said agreement if you fail to complete and handover the First party / land lord owners entitled apartments and car parking spaces within the 42 months you will have to pay Tk.5lac per months for the subsequent 12 months as rent compensation and the figure will be doubled for next 6 months. Since, the progress of the work reveals that completion of the work is quite impossible within the speculated time, let us know how you could solve this issue.
6. That under the aforesaid circumstances, my clients have been facing miserable economic condition.
7. That as per clause of 31 of the said agreement, if any dispute is raised in event of violation of the said agreement between the parties hereto, the said dispute will be resolved according to the Arbitration Act, 2001. But you earlier violated the terms of the said Venture Development Agreement due to not to pay the rest amount. Even the construction work will not be completed within the stipulated time or minimum within 4 (Four) years which are a gross violation of the said agreement. Before referring the matter to the Hon'ble Court, my clients are interested in solving the dispute mutually.
8. That under the aforesaid circumstances, you are requested to take proper step for amicable settlement of the dispute between you and my client within 30 (Thirty) days of the notice. Looking forward to hearing from you soon. Otherwise we will have no other option but to take necessary legal actions against you.

A copy of this notice is kept in my Chamber for further reference only.

Yours faithfully,

(Nosib Kayser)

Advocate, Supreme Court of Bangladesh.

Description of the properties

All that piece or parcel of land measuring 12 Katha in Gulshan Model Town, Mouza –Bhola Shamir, P.S.- Gulshan, Sub-Registry Office- Gulshan, being Plot No.10, Black No. SW (B), Road No.12 of the layout plan of Gulshan Model Town prepared by Rajuk, Dhaka.

Being butted and bounded

On the North: Plot No. House No.8 of Road No.9

On the South: 40 feet Wide Road

On the East: 40 feet Wide Road

On the West: Plot No. House No.9B of Road No.12

(Nosib Kayser)

Advocate, Supreme Court of
Bangladesh.

Sample

Date : 22.11.2019.

NOTICE FOR DRAWING UP CONTEMPT OF COURT PROCEEDING

Registered with A/D

To

1. Mohammad Sagir, Son of late Abdul Mannan, of A. Wadud & Brothers, Shop No. 35, Biponi Bitan, Police Station- Kotwali, Chattagram.
2. Syed Khurshid Alam, Son of late Syed Ahmed Mia, of Pride (Ajmir Store), Shop No. 25, Biponi Bitan, Police Station- Kotwali, Chattagram.
3. Alhaji Mohammad Shahjahan Chowdhury, Son of late Alhaji Sultan Ahmed Chowdhury, of Sultan Store, Shop No. 18, Biponi Bitan, Police Station- Kotwali, Chattagram.
4. Md. Abu Akram Uddin (Jamshed), Son of late Alhaji Abdul Odud, of Odud Fashion, Shop No. 31, Biponi Bitan, Police Station- Kotwali, Chattagram.
5. Alhaji Mohammad Ilias Chowdhury, Son of late Abdul Majid Chowdhury, of Jhumur Enterprise, Shop No. 398/B, Biponi Bitan, Police Station- Kotwali, Chattagram.
6. Md. Samshuddin Ahmed, Son of Alhaji Shafiq Ahmed, of Sorgom, Shop No. 408/A, Biponi Bitan, Police Station- Kotwali, Chattagram.
7. Sheikh Rafiuddin Ahmed, Son of Sheikh Aftab Uddin Ahmed, of Nasir & Brothers, Shop No. 53, Biponi Bitan, Police Station- Kotwali, Chattagram.
8. Md. Nazim Uddin, Son of late Rosol Ahmed, of Rajeshwari, Shop No. 358, Biponi Bitan, Police Station- Kotwali, Chattagram.
9. Md. Jahangir Alam, Son of Haji Md. Shafi, of M/S. Amena Sons, Shop No. 26, Biponi Bitan, Police Station- Kotwali, Chattagram.
10. Prodip Chowdhuri (Tinku), Son of late Manik Lal Chowdhuri, of A. Shahin Watch Co., Shop No. 128/A, Biponi Bitan, Police Station- Kotwali, Chattagram.
11. Alhaji Md. Habibur Rahman, Son of late Haji Umdah Mia, of M.K. Store, Shop No. 234, Biponi Bitan, Police Station- Kotwali, Chattagram.
12. Md. Jane Alam Chowdhuri, Son of late Shah Alam Chowdhuri, of M.N. Crockery's, Shop Nos. 99 & 100, Biponi Bitan, Police Station- Kotwali, Chattagram.

13. Farid Ahmed, Son of Alhajj Ahmed Hosen, of Standard Luggage, Shop No. 363, Biponi Bitan, Police Station- Kotwali, Chattagram.
14. Syed Md. Rashedul Haque, Son of late Haji Azizul Haque, of Cornet Jewelers, Shop No. 167/B, Biponi Bitan, Police Station- Kotwali, Chattagram.
15. Mahbubul Haque, Son of late Fazal Karim Sowdagar, of Chittagong Store, Shop No. 130, Biponi Bitan, Police Station- Kotwali, Chattagram.

..... **Notice Recipients.**

From

Mohammed Enamul Hoque

Advocate

Supreme Court of Bangladesh

For and on behalf of :

Md. Mustafizur Rahman

Son of Md. Gunnu Miah

Of 198/B, Bipani Bitan, Police Station-Kotwali, Chattagram

At present: 3, Harish Datta Lane, Nondankanon

Post Office- Sadar- 4000, Kotwali

Chattagram City Corporation, Chattagram

(hereinafter referred to as 'my client')

..... **Notice Sender.**

Dear Sir,

Under instruction of my above client, I, the undersigned am serving this notice for drawing up contempt of Court proceeding upon you as follow—

1. That earlier you the Notice recipient No. 1 has filed Writ Petition No. 7726 of 2018 before the High Court Division challenging the legality of Memo No. 41.01.0000.046.27.035.17.3028 dated 26.04.2018 issued by the respondent No. 3 appointing a caretaker body for the petitioner to take-over the management of the petitioner society and to complete the election of the Executive Committee of the petitioner society (Annexure-J).
2. That upon hearing, on 03.06.2018, a Division Bench of the High Court Division comprising of their Lordships Mr. Justice Md. Nazrul Islam Talukder and Mr. Justice Shahidul Karim was pleased to issue Rule *Nisi* and passed an order of stay in the following terms—

“Subject to disposal of the Rule Nisi, let the operation of the impugned Memo No. 41.01.0000.046.27.035.17.3028 dated 26.04.2018 issued by the respondent No. 3 (Annexure- J) and Memo No. 41.01.1500.015.06.004.15.05 dated 22.05.2018 issued by the Assistant Director (Caretaker) of Social Welfare Directorate, PH. T. Center, Chittagong (Annexure-K) be stayed till 31.12.2018”.

3. That thereafter my client has filed Civil Petition for Leave to Appeal No. 3351 of 2018 before the Hon'ble Judge-In-Chamber of the Appellate Division of the Supreme Court of Bangladesh challenging the aforesaid order. Upon hearing the Hon'ble Judge-In-Chamber was pleased to stay the aforesaid order of the High Court Division. Subsequently on 10.10.2018, the Hon'ble Appellate Division of the Supreme Court of Bangladesh affirmed the order of the Judge-In-Chamber in the following terms—

“We have heard the learned Counsel of both the parties and perused the impugned order. Upon hearing the parties, we are of the view that the ends of justice would be best served, if the Rule itself is disposed of on merit by the High Court Division.

Let the Rule be heard and disposed of by the High Court Division expeditiously.

However, the order of stay granted earlier by the learned Judge-in-Chamber be continued till disposal of the Rule.

The Leave Petition is disposed of with the above observations and direction.”

4. That on 20.08.2019, you the notice recipients have published a notice/বিজ্ঞপ্তি invoking executive members to present in meeting which was held on 25.08.2019 for approving the budget of the Bipani Bitan Merchants Welfare for the period of March' 2019 to July' 2019.
5. That as the Hon'ble Appellate Division of the Supreme Court of Bangladesh stayed the aforesaid order of the High Court Division till disposal of the Rule, now the caretaker body can take-over the management of the Bipani Bitan Merchants Welfare and handed over the necessary documents from you, which is mentioned in the Memo No. 41.01.0000.046.27.035.17.3028 dated 26.04.2018 issued by the Director, Directorate of Social Welfare Society Registration and Control Division, Samajseba Bhaban, Agargaon, Sher-E-Bangla Nagar, Dhaka (Annexure- J) and Memo No. 41.01.1500.015.06.004.15.05 dated 22.05.2018 issued by the Caretaker (Assistant Director), P.H.T Center, Chittagong (Annexure- K) of the aforesaid Writ Petition. But without doing so, you the notice recipients have been conducting the management of the Bipani Bitan Merchants Welfare and published a notice/বিজ্ঞপ্তি for approving the budget of the Bipani Bitan Merchants Welfare for the period of March' 2019 to July' 2019 which is clear violative of the aforesaid order.
6. That the facts stated hereinabove clearly shows that you the notice recipients have well aware about the order of the Hon'ble Appellate Division of the Supreme Court of Bangladesh in Civil Petition for Leave to Appeal No. 3351 of 2018 dated 01.10.2018. But unfortunately, you the notice recipients have disobeyed the order of the Hon'ble Court by conducting the management of the Bipani Bitan Merchants Welfare publishing the aforesaid notice/বিজ্ঞপ্তি dated 20.08.2019 for approving the budget of the Society for the period of March' 2019 to July' 2019.
7. In view of the above facts and circumstances, I am serving this cautionary notice for drawing up contempt of court proceeding upon you the notice recipients and requesting you

not to conduct the management of the Bipani Bitan Merchants Welfare anymore; whatsoever, failing which I have clear instruction from my client to proceed with Contempt of Court proceeding against you before the High Court Division of the Supreme Court of Bangladesh.

A copy of this notice is kept in my Chamber for further reference only.

Yours faithfully,

(Mohammed Enamul Hoque)

Advocate

Supreme Court of Bangladesh

Enclosed :

Photocopies of the certified copy of the order dated 01.10.2018 passed by the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 3351 of 2018 and order dated 03.06.2018 passed by the High Court Division of the Supreme Court of Bangladesh in Writ Petition No. 7726 of 2018.

Sample

LEGAL NOTICE

(REGISTERED WITH A/D)

LN/Eastern/C-557

August 28, 2019

To:

1. Mr. Muhammed Aminul Islam (Borrower)

Son of Mohammad Abdul Kader

Program Organizer

Brac Progoti

Mechua Bazar, Branch 16,

Swadeshi Bazar Road, Sadar, Mymensingh

And

Altab House, Khagdohar Sadar,

Mymensingh.

And

Vill-Malandha, P.O-Bhagadoda, P.S: Malandha,

Dist: Jamalpur.

2. Mr. Ataur Rahman (Guarantor)

Son of Late Reaz Uddin
House: 426, Khagdohar Sadar,
Mymensingh.

And

Vill-Goghara Kandi, P.O+P.S –Goghara Kandi Sadar,
Dist: Sherpur.

.....**Notice Receivers.**

From:

Mahbub Hossain

LLB (Hons.), LLM

University of Dhaka

Advocate, Supreme Court of Bangladesh

Suite-101, Level-11, Rozi View Plaza

189, Elephant Road, Dhaka

For and on behalf of:

EASTERN BANK LIMITED

100, Gulshan Avenue, Gulshan, Dhaka-1212

.....**Notice Giver.**

Subject : Legal Notice on behalf of Eastern Bank Limited, for recovery of outstanding over due to the extent of Tk.90,460.99/- (Taka Ninety Thousand Four Hundred Sixty and Paise Ninety Nine) only as on 31.07.2019.

Dear Sir,

Eastern Bank Limited, a Banking Company duly incorporated under the relevant laws of the land is our client. Under its instruction we serve this legal notice upon you as under:

1. That our client is a Banking Company incorporated under the Companies Act, 1994 and regulated under the Banking Companies Act, 1991 and carries on business of providing financial services with reputation from its very inception.
2. That you the Notice Receiver No.1 made written representation to the notice giver Bank for availing credit facility and as accordingly the said Bank approved of Tk.1,50,000/- (Tk. One Lac Fifty Thousand) only under “Executive Loan” scheme in favor of you vide Sanction Letter being no. EL-102016 dated 29.01.2017 against loan account being no.1750708000000192 to meet up your Furniture Purchase, under the terms and conditions mentioned therein, which were duly accepted and availed by you.
3. That you the Notice Receiver No.1 have availed the above mentioned Credit Facility in full accepting the terms and conditions set forth in the said Sanction Letter. That as against the said credit facility you the Notice Receiver No.1 executed usual charge documents in favour of the notice giver bank.

4. That thereafter, regretfully after availing the aforesaid credit facility in full, you the Notice Receiver No.1 have been extremely irregular in making repayment of your outstanding liabilities according to the mode of payment and within the stipulated period as mentioned above as well as in the said Sanction Letter.
5. That our Client on various occasions reminded you (Notice Receiver No.1) to take positive steps for adjustment of outstanding liabilities of the facility. But you have failed to repay the same which is a gross breach of the terms and conditions of the said Sanction Letter. This sort of inaction from your part clearly transpires that you are deliberately avoiding payment of loan for which you are liable to be dealt with in accordance with law.
6. That you the Notice Receiver No.2 executed the Letter of Guarantee in your personal capacity against loan availed by the Notice Receiver No. 1 and you are liable jointly and severally for the liabilities of the notice receiver no. 1. As accordingly you have been reminded several times by the notice giver Bank but it is matter of regret that you have failed to honor your committed legal obligation.
7. That at present your entire outstanding overdue stands at *Tk.90,460.99/- (Taka Ninety Thousand Four Hundred Sixty and Paisa Nine Nine) only as on 31.07.2019* bearing A/c No.175070800000192 which you are liable to settle jointly and severally.

In such situation, we, being instructed by our Client, serve this Legal Notice upon you to adjust your liability of *Tk.90,460.99/- (Taka Ninety Thousand Four Hundred Sixty and Paisa Ninety Nine) only as on 31.07.2019* within **7(Seven)** days on receipt of this notice, failing which we have clear instruction from our Client to bring appropriate legal action against you for the recovery of the said amount along with up to date interest. The risk, responsibility and consequences as to the costs of such action(s) shall lie entirely upon you.

A copy of this Legal Notice is kept in our Chamber for further reference.

Thanking you,

Yours sincerely,

(Mahbub Hossain)

Advocate, Supreme Court of Bangladesh

Sample**LEGAL NOTICE***(Registered with A/D)*

LN/CVCFL/C-692

March 23, 2020

To,**1. Intraco CNG Limited**

Represented by its Managing Director/Chairman
69, Suhrawardi Avenue, Baridhara, Dhaka

And

Ali Villa, Asian Highway, CDA Avenue, East Nasirabad,
Panchlaish, Chittagong.

2. Mr. Mohammed Riyadh Ali

Son of Abu Torab Ali
Managing Director,
Intraco CNG Limited
69, Suhrawardi Avenue, Baridhara, Dhaka.

And

Ali Villa, Asian Highway, CDA Avenue, East Nasirabad,
Panchlaish, Chittagong.

3. Mrs. Monowara Hakim Ali

Wife of Hakim Ali
Director & Chairman,
Intraco CNG Limited
69, Suhrawardi Avenue, Baridhara, Dhaka.

And

Ali Villa, Asian Highway, CDA Avenue, East Nasirabad,
Panchlaish, Chittagong.

4. Mr. Mohammed Irad Ali

Son of Hakim Ali
Director,
Intraco CNG Limited
69, Suhrawardi Avenue, Baridhara, Dhaka.

And

Ali Villa, Asian Highway, CDA Avenue, East Nasirabad,
Panchlaish, Chittagong.

----- NOTICE RECEIVERS.

From:**Mahbub Hossain**

LL.B. (Hons.), LL.M.

University of Dhaka

Advocate, Supreme Court of Bangladesh

Suite No. 101, Level-11,

189, Elephant Road, Dhaka-1205, Bangladesh

For and on behalf of:**CAPM Venture Capital & Finance Limited**Green Grandeur Tower (Level 7 &10),58, Kemal Ataturk Avenue, Banani, Dhaka-1213.**----- NOTICE GIVER.****Subject : Legal Notice under Sections 138 and 140 of the Negotiable Instruments Act, 1881.**

Dear Sir,

CAPM Venture Capital & Finance Limited, Head Office at Green Grandeur Tower (Level 7 &10), 58, Kemal Ataturk Avenue, Banani, Dhaka-1213, Bangladesh is a reputed Financial Institution of the Country is our client. Under its instruction we serve this Legal Notice upon you as under:—

1. That as mentioned our client is a Financial Institution incorporated under the Companies Act, 1994 and regulated under the Financial Institutions Act, 1993 and carries on business of providing financial services with reputation from its very inception.
2. That you the notice receiver no. 1 represented by the notice receiver no.2 have been maintaining business relation with our client for long period of time. You the notice receiver no. 3 as Director & Chairman and you the notice receiver no. 4 as Director of notice receiver no.1 have been in the charge of and responsible for the conduct of the business of the notice receiver no.1 company. Our client has contributed a lot to facilitate your business through financing in different forms as per your request and requirements time to time for many years.
3. That as accordingly, you the notice receiver no.1 represented by the notice receiver no.2 have availed several credit facilities from our client from time to time. That you have availed the loan facility fully and finally. But it is matter of great regret that, you have been very much irregular in repayment of the availed loan liabilities.
4. That as accordingly, our client made several requests to you to repay the availed outstanding loan liability which is basically public money. But you didn't take any affirmative step to repay the same which is sheered violation of the terms and conditions of the sanction letters.

5. That subsequently upon repeated persuasion on behalf of the notice giver, you the notice receivers have issued a cheque being no. CA 1761120 dated 11.03.2020 of Intraco CNG Limited bearing account No.0111100008433 containing for an amount of Tk.8,77,61,880/- (Taka Eight Crore Seventy Seven Lac Sixty One Thousand Eight Hundred Eighty) only of The Farmers Bank Limited (presently known as Padma Bank Limited).
6. That as accordingly, our client presented the said cheque in its account held with Jamuna Bank Limited, Banani Branch, 58, Kemal Ataturk Avenue, Police Station-Banani, Dhaka-1213 on 19.03.2020. But the said cheque was returned unpaid with comments “**Insufficient Fund**” on 19.03.2020.
7. That dishonor of cheque on the ground of “**Insufficient Fund**” is an offence punishable under Sections 138 read with 140 and 141 of the Negotiable Instruments Act, 1881. As such you are liable to be dealt with in accordance with law for having the cheque issued by you dishonored on ground of insufficient fund.

Therefore, by this notice (as per the provisions of the Negotiable Instruments Act, 1881) you the notice receivers are requested to pay the total amount of the dishonored cheque being Tk.8,77,61,880/- (Taka Eight Crore Seventy Seven Lac Sixty One Thousand Eight Hundred Eighty) only to our above named client, CAPM Venture Capital & Finance Limited within **30 (Thirty)** days of the receipt of this notice, failing which we have clear instruction from our Client to initiate legal proceedings against you in the appropriate Court of Law under Sections 138, 140 and 141 of the Negotiable Instruments Act, 1881.

A copy of the legal notice is kept in our Chamber for further reference.

Thanking you,

Yours sincerely,

(Mahbub Hossain)

Advocate, Supreme Court of Bangladesh

CHAPTER 5

Lawyer Certificate

Lawyer certificate denotes a document signed, sealed and properly given by a lawyer (in our jurisdiction Advocate) having authority to do so. It may contain information about any Court's order or proceeding or any legal direction or clarification for the purpose of communication of the same. Any information contained in the lawyer certificate must be certified by the issuing lawyer. Generally, lawyer certificate is given containing the information about any Court's judgment, order or direction for the interim period where information supply becomes necessary to the concerned officer till obtaining the certified copy of the judgment, order or direction from the record room of the Court. It can also be given where any clarification is necessary about any Court's judgment, direction, order or proceeding. It can also be given if any authority, such as, Embassy, Local Authority, Passport Office or other offices need some documents or information to be certified by a lawyer.

Lawyer certificate is a document of paramount legal and practical importance. It serves purpose most of the time while clients are waiting for the certified copy of the Court's judgment and order. There is no hard and fast rule that where we can issue lawyer certificate and where not; but generally we maintain professionalism while issuing the same. For example : an advocate who is yet to obtain permission from Appellate Division cannot issue lawyer certificate containing any order of the Appellate Division, Generally Advocate-on-Record does so. Likewise, an advocate who is yet to obtain permission to practice in the High Court Division may not issue lawyer certificate containing any order of the High Court Division. The same applies to all lawyers practicing in all Courts and Tribunals. Advocates who practice in their usual Court dealing with their particular cases/matters and having been instructed and authorized by their clients mostly issue lawyer certificates in respect of the subject matter they are requested for. Any error or incorrect or malafide information contained in it may lead to bar council or criminal proceeding. A lawyer must maintain honesty, professional integrity and dignity while issuing lawyer certificate. A lawyer must understand and uphold the honor and importance of his/her certificate. A lawyer unless specifically appointed by the client in appropriate way by executing wokatlatnama should not issue lawyer certificate in favor of the client.

There is no prescribed format of lawyer certificate. A lawyer can issue it in his/her style. It should be precise, easy and to the point. Its main purpose is communication of the information contained therein and serving the purpose of client. Therefore, for better communication it should be clear, unequivocal and easy to understand. There should be date, name to court, specific statement clearing the court order as exactly as possible, correct spelling and use of language, office pad (if any), lawyer's signature, seal and reference of client for and on behalf of whom the lawyer is issuing the same. Lawyer can add other information only which are necessary.

The significance and binding authority of a lawyer certificate has been recognized by the Appellate Division in *Chairman, Kushtia Co-Operative industrial Union Ltd. vs. Md. Mujibur Rahman and others*, reported in 12 1992 BLD AD 227, 44 DLR (1992) AD 219 in the tune

“When a certificate from an Advocate of a superior Court is placed before a subordinate Court conveying a prohibitory order of a superior Court, the subordinate court should rather believe than doubt the authenticity of such communication. In case of any doubt the subordinate court may ask the party producing the certificate to file an affidavit. Lest the ‘practice of communicating a court’s order by a lawyer’s certificate is not abused, the party relying on such certificate should rather file an affidavit. In this case the learned Advocate of the petitioner has advised his client to do exactly the same thing.”

For ready reference the case is quoted below—

Chairman, Kushtia Co-Operative industrial Union Ltd.

-Vs-

Md. Mujibur Rahman and others

At the instance of the petitioner a Rule was issued on 15th February, 1990, upon the opposite parties to show cause within one month from the date of the service why they will not be committed for contempt for violating this Court’s order dated 23.1.90, passed in Civil Petition for Special Leave to Appeal No. 283 of 1989 slaying further proceeding in Title Execution Case No. 1 of 1986 pending in the Court of Assistant Judge, Kushtia Sadar. The execution case arose out of a decree for ejectment of the petitioner obtained by Opposite Parties Nos. 1-2 in Title Suit No. 242 of 1984. That decree was affirmed by the appellate court. The High Court Division dismissed the petitioner’s Civil Revision No. 193 of 1986 on 16.3.89 and refused to stay the operation of its judgment. The petitioner preferred Civil Petition for Special Leave to Appeal No. 283 of 1989 on 6.6.89. A miscellaneous case challenging the executability of the decree was dismissed by the executing court on 1st January, 1990. The petitioner contends that the order was made public on 15th January, 1990, and on that day he made an application for time to move the High Court Division, but that application was rejected on 18th January, 1990 and the decree-holders were directed to put in cash deposits for completing the execution with police help. On 25th January, 1990, the learned Judge in Chamber of this Court passed an interim order on the petitioner’s leave petition staying further proceedings in the execution case. A message was sent to Kushtia with the following letter dated 25th January, 1990, of the learned Counsel Mr. Moinul Huq for the petitioner.

To-day the Hon’ble Supreme Court, Appellate Division, has stayed T.E.C. No. 1/86 of Kushtia Sadar Assistant Judge Court.. Official communication follows officially. Please inform the court by a petition with affidavit, if necessary.

On 27th January, 1990, the petitioner’s learned Advocate filed an application with the said letter of the learned Advocate in the execution court for the stay of the execution. As the writ of delivery of possession had already been issued by the executing court to the Nazir Khana, second petition was filed the same day for recall of the said writ. The learned Advocate for the decree-holder, Opposite Party No. 3 noted strong objections

on both the petitions. On 27th January 1990. Opposite Party No. 4, the learned Assistant Judge, rejected both the petitions without assigning any reason. The petitioner further stated that the copies of the aforesaid letter of the learned Counsel were-also served on Opposite Party No. 5, the Officer-in-Charge of . Kushtia Police Station and Opposite Party No. 6, the Superintendent, Kushtia, on 26th January, 1990, and 27th January 1990, respectively giving them the information of the stay order, so that they would stop aiding the execution was completed on 27th January, 1990, with the aid of the police force. It is submitted that all the opposite parties violated the stay order with full knowledge and thus committed a grave contempt of this Court. It is further submitted that the petitioner's Co-operative Society was over taken unexpectedly and suffered a huge loss as the process-server reported only a short list of if the petitioner removed from the decreed premises.

In two separate sets of replies to the show cause, Opposite Parties Nos. 1 to 3 and Opposite party No. 4 narrated certain circumstances for consideration of this court and then tendered apology. The learned Advocate for the petitioner has contended that as in their narration of in their manner tendering of apology both Opposite Parties Nos. 1 to 3, and Opposite Party No. 4 have used, curiously enough, identical expressions smacking a collusion amongst themselves, and trying to justify their conduct, their apologies, not being unqualified, ought to be rejected. Subsequently, by separate replies, Opposite Parties Nos. 1 to 3, and opposite party No. 4, with-drew their earlier statements and submitted a short affidavit tendering unequivocal apology and throwing themselves to the mercy of this Court.

Opposite Party No. 5 and Opposite Party No. 6 in their affidavits asserted that no letter of Advocate nor any verbal intimation by any person regarding staying of the execution of the decree passed by the Appellate Division was served on or made to them. Opposite Party No. 5 stated that if he "had unintentionally acted which might be interpreted as showing disrespect technically to this Court" he prays for mercy and tenders unqualified apology. By a supplementary affidavit, affirmed on 9th June, 1981,' he submitted that he had inadvertently put the word "technically" in his earlier affidavit and prayed for deletion of that word and again threw himself to the mercy of this Court.

By separate supplementary affidavits each of Opposite Parties Nos. 5 and 6 drew our attention to the incongruous fact that though both the purported copies of the Advocate's letter, were shown as dispatched to the Superintendent of Police and the. Officer-in-Charge, Kushtia Police Station on 27th January, 1990, in the 1st column of the page of the peon book, annexed to the petitioner the copy of the letter addressed to Officer-in-Charge, Kushtia Police Station, was shown to have been received on 26th January, 1990.

The learned Advocate for the petitioner, however, did not press the Rule against Opposite Parties Nos. 5 and 6.

The earliest case on the point when an appellate Court's order staying execution of the decree will take effect is *Bessesswari Chowdhurany V. Horro Sunhdar Mazumdar*, (1896-97) 1 CWN 226. In that case a Division Bench of the Calcutta High Court held that an order staying execution of a decree against which an appeal is pending is in the nature of a prohibitory order, and as such, would only take effect when communicated. Dissenting from that view, another Bench of the same High Court held in *Hukum Chand Boid V. Kamalanand Singh* (1906) ILR 33 Cal. 927, that an order of stay takes effect from the moment it is passed and the knowledge of the court to which it is addressed is immaterial and from the moment the order is passed the court to which the application is made for execution has no authority to execute it. Different High Courts took different views relying on either of the two decisions. In *Mulraj V. Murti Raghunathji Maharaj*, AIR 1967 S.C. 1386, the Indian Supreme Court, after considering a number of decisions of different in *Bessesswari Chowdhurany's* case, 1 CWN-266.

The necessity of the knowledge of the executing Court is a *sin qua non* for affecting its jurisdiction as well as for a committal for contempt in case of violation. As soon as the executing Court comes to know of the, stay order either by receiving a communication from the court passing the stay order or from an affidavit from one of the parties to the proceeding or in other way, it will stay its hands till further order and, if it does do so, it not only acts illegally but will also be liable for contempt of the court that passed the order. There is, however, no doubt that no action for contempt can be taken against an executing Court, if it carries on execution in ignorance of the order of stay.

We may refer to the following observations made in *Oswald's Contempt of Court*: The judgment or order should be served on the party personally, except in the following cases: (1) Prohibiting orders, the drawing up of which is not completed;

In order to justify committal for breach of prohibiting order, it is not necessary that the order should have been served upon the party against whom it has been granted, it be proved that he had notice of the order aliunde, as by telegram, or newspaper report, or otherwise, and knew that it was intended to be enforced, or if he consented to the order, or if he was present in Court when the order was pronounced, or when the motion was made, although he left before the order was pronounced. “(*Oswald's Contempt of Court*, Third Edition pp. 199, 203).

In this regard the learned Counsel for the petitioner has cited *Abdul Karim & ors. V. Boota and others*, 8 DLR (W. P. Lahore 1965) 15. There are many other decisions Viz. *Hpshiar Singh V. Gurbachan Singh*, AIR 1962 S.C. 1089 (1093-94), *Bunna Prasad and others V. State of U.P.*, AIR 1968 S.C. 1348, to which we need not refer to further.

There may be circumstances where a Court may have valid reasons to doubt the authenticity of order conveyed to it by an interested party either for the letter's recalcitrance to obey or obduracy to dodge its order or for any other reason, then in those circumstances, it may be said that there was no willful disobedience of the order conveyed to it When a certificate from an Advocate of a superior Court is placed before

a subordinate Court conveying a prohibitory order of a superior Court, the subordinate court should rather believe than doubt the authenticity of such communication. In case of any doubt the subordinate court may ask the party producing the certificate to file an affidavit. Lest the 'practice of communicating a court's order by a lawyer's certificate is not abused, the party relying on such certificate should rather file an affidavit. In this case the learned Advocate of the petitioner has advised his client to do exactly the same thing.

Where there is no justification for doubting the authenticity of an order of the superior Court, it is the duty of the subordinate Court to carry out that order and it cannot take up the plea that as the order had not been officially communicated, it was at liberty to ignore it. It is a well-principle that in a contempt matter there cannot be both justification and apology. By filing a series of affidavits, some of them were not even affirmed by the contemnors, opposite parties Nos. 1 to 4 have created before us an lawful clutter. This could have been avoided by their teamed Advocate-on-Record had they been more careful in their concern for their clients. We disapprove of their exertions made in this matter.

If an apology is to be offered in right earnest, then it must be offered unequivocally and at the earliest opportunity. A belated apology hardly shows the contrition that is the essence of the purging of a contempt. One who has the courage of his convictions may, however, take the risk and run the gauntlet of proving that he is not in contempt. That is a different matter. All the opposite parties have tendered apologies, Opposite party Nos. 5 and 6 could have contested the matter, through, the petitioner does not press the rule against them.

In deciding a serious question whether there is contempt of court or not both the accuser as well as the judge of the accusation, is to act with as great circumspection as possible making all allowances for errors of judgment and difficulties the contemnor might have suffered in the facts of the case. It is only in a clear case of contumacious conduct not explainable otherwise, that the contemnor must be punished.

When the petitioner filed the application communicating the stay order granted by this Court the title execution case was in its last stage. The writ had already been issued to the Nazir, Opposite Party Nos. 4 could have recalled the writ. She, however, did not do that. If she had considered with a conviction that the matter had already gone out of her control and she could not recall the writ then she could not be chastised for that kind of error of judgment.

The title execution case is all over. The leave petition on which the stay order was passed by the learned Judge in Chamber had also been dismissed on 15th February, 1990. The matter should rest now. The petitioner's prayer for compensation for the alleged excess committed in the execution need not also call for any consideration.

All the opposite parties have shown sufficient contrition in throwing themselves to the mercy of this Court. Their apologies are accepted. The Rule is discharged.

Mustafa Kamal, J.: The decision in this case is unanimous, but I would like to add that the Civil Rules and Orders (Volume) issued by the authority of the Supreme Court (High Court Division), (1981), deals, inter alia, with the matter of fixing of dates and adjournments in Chapter 7 and of particular relevance thereto is the Note to Rule 125, which is as follows:

“Note. The Supreme Court does not issue judicial orders by telegram, and the action to be taken by a Court in regard to telegrams said to have been received by a party or his legal adviser communicating the substance of and order of the Supreme Court is one for the discretion of the Court. A Court if informed by a responsible Advocate that for instance a proceeding pending before it has been stayed by the Supreme Court, may in its discretion grant a short adjournment sufficient to allow the authoritative orders being received by post. But no adjournment can be demanded as of right on the strength of a private telegram.”

What is true of adjournment, is, I believe, true also of stay of execution of a decree when the information is received from an Advocate or by private telegram. No stay of execution can be demanded as of right on the strength of a private telegram or on information received from an Advocate. The Court may stay execution in its discretion, but when an Advocate’s information is disregarded by the Court, a reason must be given so that the exercise of discretion may be scrutinised by the Superior Court. Normally, therefore, an Advocate’s information will be honoured by the Court, unless a strong case for refusal is made out by the Court in its order of refusal.

Sample

LAWYER CERTIFICATE

Date: 29.02.2020.

IN THE SUPREME COURT OF BANGLADESH HIGH COURT DIVISION (CRIMINAL MISCELLANEOUS JURISDICTION)

CRIMINAL MISCELLANEOUS CASE NO. 21037 OF 2019.

Ahaduzzaman, son of late Abdul Mannan, Proprietor
M/S N.D Printing & Embroidery Ltd, Park View,
Apartment No. A-3, Holding # 243/1, Road No. 04,
Dhaka Cantonment R/A, P.S.- Cantonment, Dhaka-
1216, Business Address: Rashid Market, Gaziarchat,
Ashulia, Savar, P.S. Ashulia, Dhaka-1244, other address:
Vill- Dhaishar, P.S. Rajnagar, Dist- Moulavi Bazar.

..... **Accused-petitioner.**
(On bail)

-V E R S U S-

1. The State
2. Bangla Bank Limited, Mirpur-1 Branch Rabiul Plaza, (1st Floor), Mirpur Housing State, Plot # Shee-1/Kha, Section-1, Mirpur, P.S. Shah Ali, Dhaka-1216, represented by Mr. Md. Abdul Motin, son of late Md. Nurul Islam, Senior Executive Officer, Mirpur-1 Branch, Rabiul Plaza, (1st Floor), Mirpur Housing State, Plot # Shee-1/Kha, Section-1, Mirpur, P.S. Shah Ali, Dhaka-1216.

..... **Opposite Parties.**

That the learned Advocate for the aforesaid accused-petitioner filed Criminal Miscellaneous case before the Hon'ble High Court Division of the Supreme Court of Bangladesh quashing of entire proceeding of Metro: Sessions Case No. 7948 of 2016 arising out of C.R. Case No. 246 of 2016 under section 138 read with section 140 of the Negotiable Instruments Act, 1881, now pending in the Court of learned Additional Metropolitan Sessions Judge, No. 3, Dhaka. After hearing the learned Advocate for the petitioner, a Division Bench of Hon'ble High Court Division comprising of their Lordships Mr. Justice Md. and Mr. Justice Md..... was pleased to issue Rule and Stay the further proceeding of the impugned case for a period of 6 (six) months vide Order dated 13.09.2019. Subsequently, the said order was extended for a period of 6 (three) months vide Order dated 19.02.2020 from the Hon'ble High Court Division. Certified copy of the said Order has not obtained yet. We will collect it very soon and communicate in due course

This is for information of all concerned and shall be taken as authentic and binding upon all before whom this certificate is placed [**Ref : 44DLR (AD) 219**].

Regards,

Advocate,
Supreme Court of Bangladesh

Sample**LAWYER CERTIFICATE**

Date: 25.03.2020.

**IN THE SUPREME COURT OF BAGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 19760 OF 2019

IN THE MATTER OF:

Owazed Ali and others

----- **Petitioners.**

-VERSUS-

Bangladesh and others

..... **Respondents.****AND****IN THE MATTER OF:**

Owazed Ali, Son of late Kabir Uddin, Proprietor of M/S. Manikganj Bricks Manufacturing Co., of Village-Dotara, Upazila- Shatura, District- Manikganj.

----- **Applicant**

That the applicant as petitioners filed this Writ Petition challenging legality of the demolishing the Brick Field namely M/S. Manikganj Bricks manufacturing Co. situated at Village- Datra, Under Upazila- Satura, District- Manikganj by the Mobile Court headed by an Executive Magistrate on 04.12.2019. That after hearing the learned Advocate of the petitioners and perusing the documents, the Hon'ble High Court Division was pleased to issue Rule and direction.

Subsequently, in the pending writ petition, the petitioners filed an application for direction upon the respondents to allow the petitioners to carry out the business of their firm "M/S. Manikganj Bricks Manufacturing Co." till 1.04.2020. That after hearing the said application, the Hon'ble High Court Division was pleased to allow the application and direct the respondents not to disturb the peaceful business of the petitioners vide Order dated 26.02.2020 till 1.04.2020 which was subsequently extended on 24.03.2020 for a further period of 2 (two) months from the date of expiry. The certified copy of the same has not been delivered yet and the same will be communicated as soon as possible.

The aforesaid Writ Petition is now pending before a Division Bench of Hon'ble High Court Division for motion hearing, which will be heard in due course.

This is for information of all concerned.

Regards,

(Shahadat Hossain)

Advocate, Supreme Court of Bangladesh.

Sample**LAWYER CERTIFICATE**

Date: 1.12.2019.

DISTRICT : CHATTOGRAM

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. OF 2019.
(Tender No. 4567 dated 28.11.2019)

IN THE MATTER OF:

Motin Hossain, son of Mohammad Abdul Malek,
Managing Director of YZ Fashions Industries Limited,
address: Bananta Apartment, Apartment No. B-4, House
No. 31/B, Road No. 3, Khulshi R/A, Police Station -
Khulshi, District- Chattogram.

---- **Accused-Petitioner.**
(On Bail)

-Versus-

1. The State
2. First Security Islami Bank Limited, Head Office:
House No. SW(1) 1/A, Road No. 08, Gulshan- 1,
Dhaka – 1212, Branch Office: Agrabad Branch,
Hossain Court (2nd Floor), 75, Agrabad
Commercial Area, Police Station- Doublemooring,
District- Chattogram, represented by its authorized
officer Mohammad Mizanur Rahman, son of late
Abu Taher and Khurshida Begum, Officer, First
Security Islami Bank Limited, Agrabad Branch,
Police Station- Doublemooring, District-
Chattogram.

---- **Opposite Parties.**

That the above mentioned petitioner filed the aforesaid case under section 561A of the Code of Criminal Procedure, 1898 for quashing the proceeding of Sessions Case No. 125 of 2018 arising out of C.R. Case No. 757 of 2017 (Doublemooring) under section 138/140 of the Negotiable Instruments Act, 1881, now pending in the learned Joint Sessions Judge, Court No. 4, Chattogram. After hearing the party and perusing the documents, the Hon'ble High Court

Division comprising of their Lordships Mr. Justice Md. and Mr. Justice was pleased to issue Rule and grant stay for a period of 6 (six) months vide order dated 1.12.2019. Certified copy of the said order has not been ready yet for delivery. We will collect it very soon and communicate in due course.

This certificate shall have to be treated as authentic and binding upon as per decision of the Hon'ble Appellate Division of the Supreme Court of Bangladesh. [Ref: 44 DLR (AD) 219].

Regards,

(Saddam Hossain)
Advocate, Supreme Court of Bangladesh.

Sample

LAWYER CERTIFICATE

Date: 17.12.2018.

**IN THE SUPREME COURT OF BAGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 15921 OF 2018.

Zakir Ahmed, son of late Sharif Ahmad and Shanjida Ahmad of Boinna, Post Office- Toperbari-1350, Dhamrai, Dhaka.

..... **Petitioner.**

-Versus-

Bangladesh Election Commission, represented by the Chief Election Commissioner, of Election Commission Bhaban, Agargaon, Dhaka and others.

..... **Respondents.**

That the petitioner filed the aforesaid writ petition impugned Order dated 06.12.2018 passed by the respondent No. 1 in Election Appeal No. 08 of 2018 allowing the appeal and thereby declaring the respondent no. 5 as a valid candidate by accepting his nomination paper which was filed for contesting the 11th National Parliamentary Election, 2018 from the Constituency No. 193, Dhaka – 20, Dhaka from Bangladesh Nationalist Party (BNP) by setting aside the decision of the respondent no. 4 dated 02.12.2018 rejecting the said nomination paper (as evident from Annexure- “A”).

That after hearing the learned Advocate of the petitioner, a Division Bench of the Hon'ble High Court Division comprising of their Lordships Mr. Justice and Mr. Justice was pleased to issue Rule and pass an order of stay of the order dated 06.12.2018 passed by the respondent No. 1 in Election Appeal No. 08 of 2018 allowing the appeal of the respondent No. 5 for a period of 3 (three) months vide Order dated 11.12.2018.

Against the said Order of the High Court Division, the respondent No. 5 filed Civil Miscellaneous Petition No. 208 of 2018 and obtained Stay from the Hon'ble Judge-in-Chamber of Appellate Division on 12.12.2018. The Civil Miscellaneous Petition was posted before the Full Bench of Appellate Division on 13.12.2018. After hearing at length of both the parties and perusing the documents along with laws, the Hon'ble Appellate Division was pleased to vacate the said Order of Stay passed by the Hon'ble Judge-in-Chamber vide Order dated 17.12.2018. By dint of that position, the earlier Order of Stay passed by the Hon'ble High Court Division on 11.12.2018 in this Writ Petition is still continuing. Certified copy of the said Order dated 17.12.2018 passed by the Hon'ble Appellate Division has not been obtained yet. We will collect it very soon and communicate in due course.

This is for information of all concerned and shall be taken as authentic and binding upon all before whom this certificate is placed [Ref: 44DLR (AD) 219].

Regards,

(.....)

Advocate, Supreme Court of Bangladesh.

Sample

LAWYER CERTIFICATE

Date: 27.01.2019

DISTRICT : DHAKA.

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

F. A. T. NO. 567 OF 2018.
F. A. NO. 456 OF 2018
Civil Rule No. of 2018

IN THE MATTER OF:

Pink Style Limited and others

---- **Plaintiffs- Appellants-**
Petitioners.

-VERSUS –

Bangladesh Bank and others.

..... **Defendants-Respondents-**
Opposite Parties.

That the above noted First Appeal has been directed challenging propriety of the judgment and decree dated 8.01.2019, decree signed on 13.01.2019 passed by the learned Joint District Judge, 5th Court, Dhaka in Title Suit No. 20 of 2019 rejecting the plaint under Order VII Rule 11(d) of the Code of Civil Procedure-1908. That in the said appeal, the appellant-petitioners also filed an application for injunction/stay restraining the defendants-opposite parties from inclusion/circulation/publication of the names of the plaintiffs in the CIB report of Bangladesh Bank showing them as defaulters in connection with all credit facilities advanced by the defendant Nos. 3-8 to the plaintiffs-petitioners till disposal of the instant First Appeal for ends of justice.

After hearing the learned Advocate for the appellant-petitioners and perusing the documents, a Division Bench of the Hon'ble Court comprising of their Lordships Mr. Justice Mamnoon Rahman and Mr. Justice Ashish Ranjan Das was pleased to admit the appeal, issue Rule and grant injunction/stay restraining the defendants-opposite parties from inclusion/circulation /publication of the names of the plaintiffs in the CIB report of Bangladesh Bank showing them as defaulters in connection with all credit facilities advanced by the defendant Nos. 3-8 to the plaintiffs-petitioners till disposal of the instant First Appeal for a period 04 (four) months vide Order dated 27.01.2019. We are yet to receive the certified copy of the said Order. The certified copy of the said Order will be communicated to all concerned as soon as we will get the copy from the Hon'ble Court.

This is for information of all concerned and shall be taken as authentic and binding upon all before whom this certificate is placed [**Ref: 44DLR (AD) 219**].

Regards,

(Saddam Hossain)

Advocate, Supreme Court of Bangladesh.

CHAPTER 6

Plaint and Written Statement

1. Plaint

Section 26 of the Code of Civil Procedure, 1908 provides that every suit shall be instituted by the presentation of a plaint or in such manner as may be prescribed. The particulars to be contained in the plaint are provided under Order VII Rule 11 in the following manner—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed; but where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.¹ Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.²

Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.³ The plaint shall show that the defendant is or claims to be interested in subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.⁴

1. Order VII Rule 2 of the Code of Civil Procedure, 1908.
2. Order VII Rule 3, Ibid.
3. Order VII Rule 4, Ibid.
4. Order VII Rule 5, Ibid.

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed; provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.⁵

[Underlines are provided to draw your prompt concentration upon the key points of each elements.]

2. Artha Rin Plaint

Artha Rin Adalat Ain, 2003 is a special law and it provides some particular contents to be stated in the plaint. Section 8 provides that—

ধারা ৮। আরজি :

- (১) আর্থিক প্রতিষ্ঠান আরজি দাখিলের মাধ্যমে মামলা দায়ের করিবে এবং উক্ত আরজিতে, অন্যান্য বিষয়ের মধ্যে, নিম্নবর্ণিত বিষয়সমূহ উল্লিখিত হইবে, যথা :—
 - (ক) বাদীর নাম, ঠিকানা, কর্মস্থল, ইত্যাদির বিবরণ;
 - (খ) বিবাদীর নাম, ঠিকানা, কর্মস্থল, ইত্যাদির বিবরণ;
 - (গ) দাবীর সহিত সম্পর্কিত সকল ঘটনা;
 - (ঘ) মামলার কারণ উদ্ভবের ঘটনা, স্থান এবং তারিখ;
 - (ঙ) কোর্ট ফি প্রদানের উদ্দেশ্যে মামলার তায়দাদ;
 - (চ) আদালতের এখতিয়ার রহিয়াছে মর্মে বিবরণ; এবং
 - (ছ) প্রার্থিত প্রতিকার।
- (২) পূর্ববর্তী উপ-ধারায় বর্ণিত বিষয়াদির অতিরিক্ত, বাদী, আরজিতে আরও অন্তর্ভুক্ত করিবে—
 - (ক) একটি তফসিল, যাহাতে প্রদর্শিত হইবে—
 - (অ) বিবাদীকে প্রদত্ত মূল ঋণ বা, ক্ষেত্রমত, বিনিয়োগকৃত টাকার পরিমাণ;
 - (আ) স্বাভাবিক সুদ বা, ক্ষেত্রমত, মুনাফা বা ভাড়া হিসাবে আরোপিত টাকার পরিমাণ;
 - (ই) দণ্ড সুদ হিসাবে আরোপিত টাকার পরিমাণ;
 - (ঈ) আর অন্যান্য বিষয় বাবদ বিবাদীর উপর আরোপিত টাকার পরিমাণ;
 - (উ) মামলা দায়েরের পূর্ব পর্যন্ত প্রণীত শেষ হিসাব মতে বিবাদী কর্তৃক বাদী আর্থিক প্রতিষ্ঠানকে ঋণ বা পাওনা পরিশোধ বাবদে জমাদানকৃত টাকার পরিমাণ; এবং
 - (ঊ) বাদী কর্তৃক প্রদত্ত ও ধার্য মোট এবং বিবাদী কর্তৃক পরিশোধিত মোট টাকার তুলামূলক অবস্থান;
 - (খ) একটি তফসিল, যাহাতে ঐ সকল স্থাবর ও অস্থাবর সম্পত্তি যাহা বন্ধক বা জামানত রাখিয়া বিবাদী কর্তৃক ঋণ গৃহীত হইয়াছে, উহাদের এবং সংশ্লিষ্ট বন্ধকী বা জামানতী দলিলের বিস্তারিত পরিচয়, বিবরণ, এবং আর্থিক মূল্যায়ন যদি হইয়া থাকে, প্রদর্শিত হইবে।
- (৩) বাদী তাহার দাবীর সমর্থনে সাক্ষ্য হিসাবে কোন দলিলের উল্লেখ করিলে এবং ঐ দলিল তাহার দখলে থাকিলে, আরজির সহিত উক্ত দলিল অথবা উহার সত্যায়িত নকল বা ফটোকপি ফিরিস্তি সহকারে দাখিল করিবে।
- (৪) বাদী তাহার দাবীর সমর্থনে সাক্ষ্য হিসাবে তাহার দখলে নাই এমন কোন দলিলের উপর নির্ভর করিলে, উক্ত দলিল তাহার নিকট আছে তাহা উল্লেখ করিয়া উক্ত দলিলের একটি তালিকা আরজির সহিত দাখিল করিবে।

5. Order VII Rule 6, Ibid.

- (৫) উপ-ধারা (২) ও (৩) এর বিধানের ব্যত্যয়ে, পরবর্তীতে কোন দলিল দাখিল করিলে, আদালত সংগত কারণ ও খরচ প্রদান ব্যতিরেকে উহা গ্রহণ করিবে না; এবং প্রদেয় খরচ সরকারি রাজস্ব হিসাবে নির্ধারিত খাতে জমা হইবে।
- (৬) আরজিতে একটি দফায়, পক্ষে কার্যকারক হিসাবে কে দায়িত্ব পালন করিবেন, বাদী উহা উল্লেখ করিবে।
- (৭) বাদী কোন মামলায় বিবাদীর সম্পত্তির কোন তফসিল প্রদান করিতে অসমর্থ হইলে, বাদীর আবেদনক্রমে আদালত বিবাদীকে লিখিত হলফনামা সহকারে তাহার অস্থাবর ও স্থাবর সম্পত্তির হিসাব দাখিল করিতে নির্দেশ প্রদান করিবে এবং এইরূপ নির্দেশ প্রাপ্ত হইলে বিবাদী তদনুসারে তাহার অস্থাবর ও স্থাবর সম্পত্তির, যদি থাকে, তালিকা লিখিত হলফনামা সহকারে আদালতে পেশ করিবে।
- (৮) এই ধারার অধীনে আর্থিক প্রতিষ্ঠান মামলা দাখিল করার সময়, মোট যতসংখ্যক বিবাদী থাকিবেন, আরজি ও সংযুক্ত কাগজাদির ততসংখ্যক অনুলিপি আদালতে দাখিল করিবে।

Sample

BEFORE THE JUDGE, ARTHA RIN ADALAT- 2, DHAKA

ARTHA RIN SUIT NO. _____ OF 2020

Bangla Finance Limited

Head Office at Roma Tower (Level-11), 33,

Kemal Ataturk Avenue, Banani,

Dhaka-1213.

Represented by its Authorized Officer

Muhammad Alam,

Son of Late Md. Latif Miah,

Assistant Officer, aged about- 29 years

----- **PLAINTIFF.**

-V E R S U S-

3. Mrs. Selina Akter (Borrower)

Wife of Md. Alam

Proprietor of N.K Plastic Industries

House- 15, Lane-06, Abdullahbagh,

North Badda, Dhaka.

AND

House-249, (03rd Floor),

Plot- 576, Road-02, Badda, Dhaka.

AND

Vill- Khorkhoria, P.O.- Nandina,

P.S.- Jamalpur, Dist.- Jamalpur.

- 4. Mr. Md. Jahangir Alam (Guarantor)**
Son of Late Pias Uddin Ahamed
House-244, (03rd Floor),
Plot- 530, Road-02, Badda, Dhaka.
AND
Vill- Bania Bazar, P.O.- Jamalpur,
P.S.- Jamalpur, Dist.- Jamalpur.
AND
House- 35, Lane-06, Abdullahbagh,
North Badda, Dhaka.
- 5. Mr. Md. Mirajul Islam (Guarantor)**
Son of Late Sobir Uddin
Proprietor of M.K Plastic Industries
Dag No. 209, Uttar Badda Hasan Uddin Road,
Misritola, Badda, Dhaka.
AND
House- 12, Road- Thana Road, Misritola,
P.O.- Badda, P.S.- Badda, Dist.- Dhaka.
AND
Plot- 24, Road- Thana Road, Misritola,
P.O.- Badda, P.S.- Badda, Dist.- Dhaka.
- 6. Mr. Md. Jasim Uddin (Guarantor)**
Son of Late Pias Uddin Ahamed
Holding- 530 (Gr. Floor), Ward No.-09,
Road No.-05, Uttar Badda Hasan Uddin Road, Dhaka.
AND
Vill.- Betmari, P.O.- Roha,
P.S.- Sheerpur, Dist.- Sheerpur.
AND
Vill- Bania Bazar, P.O.- Jamalpur,
P.S.- Jamalpur, Dist.- Jamalpur
- 7. Mr. Md. Zakaria (Guarantor)**
Sone of Late Gias Uddin Ahamed
GM Bari, Abdullahbagh,
Ward No.- 09, Road- 05,
Uttar Badda,Dhaka.
AND
Vill.- Bania Bazar, P.O.- Jamalpur,
P.S.- Jamalpur, Dist.- Jamalpur

AND

House- 25, Lane-06,
Abdullahbagh, North Badda, Dhaka

8. Mr. Md. Shah Alam (Guarantor)

Sone of Late Hazi Abdul Awal
House-05, Road-06, Lane- 09,
Abdullahbagh, North Badda, Dhaka

AND

Vill.- Aworal, P.O.- Bodorpur,
P.S.- Chandina, Dist.- Comilla.

AND

CHA-120/A, North Badda, Dhaka-1212

AND

Dynasty Apt. F-C-1, House No.-15,
Road-07, Gulshan, Dhaka.

-----DEFENDANTS.

SUIT FOR RECOVERY OF MONEY

**SUIT VALUED AT TK.7,59,422/-(TAKA SEVEN LAC
FIFTY NINE THOUSAND FOUR HUNDRED TWENTY
TWO) ONLY AS ON 31.01.2020.**

THE PLAINTIFF ABOVE NAMED BEGS TO STATE AS FOLLOWS :

1. That the Bangla Finance Limited is a Financial Institution duly incorporated under the relevant laws of the land having its Head Office at Roma Tower (Level-11), 33, Kemal Ataturk Avenue, Banani ,Dhaka-1213, Bangladesh and carrying on banking business with name and fame from its very inception.
2. That the Defendant No.1. **Mrs. Selina Akter**, Wife of Md. Alam, Proprietor of N.K Plastic Industries, House- 33, Lane-06, Abdullahbagh,North Badda, Dhaka is a Beneficiary of LankaBangla Finance Limited, Personal Loan facility provided by the Plaintiff with different collateral securities. That the Defendant Nos. 2-6 are the Personal Guarantors of the loan availed by Defendant No.1.
3. That the addresses of the Defendants given herein above are correct addresses for the purpose of serving of Summons and Notices etc. upon them in respect of this Artha Rin Suit.
4. That on the application of the Defendant No. 01 dated 05.10.2017 for availing credit facility; the Plaintiff Financial Institution approved "Term Loan" Under SME Finance (ANONNYA) Facility of Tk.10,00,000/-(Taka Ten Lac) only *vide* Sanction Letter Ref. No. 21/28358/2017 dated 27.11.2017 to meet up his need of "Expansion Of Business", under the terms and conditions mentioned therein, which were duly accepted and availed by him.

5. That the loan was disbursed from the Head Office of Plaintiff Financial Institution in favor of the Defendant No.1 which was availed by the said Defendant fully and finally. That as against the aforesaid loan facility, the Defendant No.1 executed Demand Promissory Note, Letter of Continuation, Loan Agreement, Letter of Hypothecation by way of Floating Charge, Irrevocable General Power of Attorney to sell the Hypothecated Assets and Notice Receiver Nos. 2, 3, 4, 5 & 6 executed Letter of Personal Guarantee all dated on 28.11.2017 and other standard charge documents in favor of the Plaintiff against the loan availed by the Defendant No.1.
6. That thereafter, the Defendant No.1 has been extremely irregular in repayment of the loan liabilities. The Financial Institution on several occasions requested him to repay the loan. The said Defendant always made false statements and play dilly-dally strategy. The Plaintiff on various instances reminded him to take affirmative steps for adjustment of outstanding overdue of the facility. But it is a matter of regret that the said Defendants are yet to adjust the outstanding loan amount.
7. That the Defendant Nos. 2-6 have provided Personal Guarantee as against the loan availed by the Defendant No.1 and as accordingly the said Defendants were requested on several times by the Plaintiff to adjust the outstanding due. But it is a matter of regret that they did not take any affirmative steps as agreed.
8. That the Defendants also on several occasions admitted the loan but did not pay any heed to pay the outstanding due. That despite several reminders from the Plaintiff Financial Institution, the Defendants have not adjusted the credit facility availed and used so far.
9. That it is submitted that the assets of the defendant No. 1 which have been hypothecated with the plaintiff bank, were installed and situated in the premise of the defendant no.1; and from the very inception, were fully under the control & possession of the defendant No. 1 and where in fact this plaintiff bank had no available access at all. However, presently upon verification, it turned out that no such movables at all subsists in the earmarked premise. In this backdrop, the Plaintiff bank did not pursue for the auction of Hypothecated properties as required under Section 12 of the Artha Rin Adalat Ain, 2003.
10. That thereafter, finding no positive steps from the Defendants the Plaintiff on 18.02.2020 sent legal notice through its nominated learned lawyer requesting them to adjust the same within **7 (Seven)** days from receipt of the notice. In the said legal notice the Defendants were warned of legal action. The Defendants with malafide intention did not receive or reply the legal notice.
11. That the Defendants have not come forward with any kind of positive step to adjust the outstanding amount though they made several commitments to adjust the loan. Therefore, finding no other alternatives, the Plaintiff has been constrained to file this suit.
12. That the present outstanding liability stands at **Tk.7, 59,422/- (Taka Seven Lac Fifty Nine Thousand Four Hundred Twenty Two) only as on 31.01.2020** and the Defendants are liable to pay the said amount along with up to date interest thereon to the Plaintiff.

13. That the Plaintiff being a Financial institution cannot wait for an imprecise period of time for the Defendants to settle its outstanding dues, which are admitted, undisputed and have always been acknowledged by the Defendants. It is also evident from the various communications with the Defendants that they will not adjust outstanding liabilities unless compelled by court of law.
14. That the cause of action for filing this suit arose on 05.10.2017 when the Defendant No.1 has applied for loan, on 27.11.2017 when the Plaintiff approved the said credit facility, and on 28.11.2017 the defendants executed charge documents, on the dates, when reminders were made to the Defendants for adjusting the loan liability, thereafter, on 18.02.2020 when legal notice was served upon the Defendants. On dates, the Defendants have made several commitments and assured the Plaintiff of repaying the debts, but not made payment. The said cause of action is still continuing.
15. That for the purpose of Court fees and pecuniary jurisdiction of the claimed amount **Tk.7,59,422/- (Taka Seven Lac Fifty Nine Thousand Four Hundred Twenty Two) only as on 31.01.2020** and *ad-valorem* court fees of Tk.21,833.38/- (*Taka Twenty One Thousand Eight Hundred Thirty Three and Paisa Thirty Eight*) only is paid thereon.
16. That the Plaintiff being situated in Dhaka and the loan being allowed and disbursed in Dhaka and the Plaintiff being financial institution carrying on business in Dhaka the court has jurisdiction to entertain and try the case.
17. That **Muhammad Alam**, Son of Late Md. Latif, Bangla Finance Limited, Head Office-Roma Tower (Level-11), 33, Kemal Ataturk Avenue, Banani, Dhaka-1213, Bangladesh is duly authorized by the Plaintiff for swearing affidavit, giving deposition and to do all other necessary works that may arise in relation to the instant suit. On his absence, the officer posted in his place will do the needful in connection with the instant suit.

Wherefore, it is humbly prayed that your honor would graciously be pleased to:—

- a) Pass a Decree against the Defendants and in favor of the Plaintiff to repay the outstanding dues of amount **Tk.7,59,422/- (Taka Seven Lac Fifty Nine Thousand Four Hundred Twenty Two) only as on 31.01.2020** along with interest as per law till the date of the decree in favor of the Plaintiff and against the Defendants.
- b) To pass a Decree of interest as per law upon the decreed amount from the date of the decree till the date of realization of the same.
- c) To pass an Order of costs of the suit against the Defendants and in favor of the Plaintiff.
- d) To pass any other relief or relieves or further order or orders as your Honor may seem fit and proper in the eye of law and equity.

And for this act of kindness, the Plaintiff – financial institution, as in duty bound shall ever pray.

SCHEDULE OF CLAIM

Sl. No.	Particulars	Amount in BDT
1.	Principal Amount	Tk.10,00,000/-
2.	Interest & Other Charge accrued	Tk.1,77,319/-
3.	Amount paid by the borrower	Tk.4,17,897/-
Present outstanding as on 30.01.2020		Tk. 7,59,422/-

AFFIDAVIT

I, **Muhammad Alam**, Son of Late Md. Latif, Assistant Officer, Legal Affairs Division of Bangla Finance Limited, its corporate office Roma Tower (Level-11), 33 Kemal Ataturk Avenue, Banani, Dhaka, aged about- 31 years, by occupation service, by nationality Bangladeshi, do hereby solemnly affirm and say as follows:—

1. That I am the authorized person on behalf of the plaintiff and as such acquainted with the facts and circumstances of this case and competent to swear this Affidavit.
2. That the statements made in this plaint along with submitted documents are true to the best of my knowledge and belief and knowing truth thereof I sign this Affidavit on this the 11th day of March, 2020 at 10.30 a.m.

DEPONENT

The deponent is known to me and identified by me

ADVOCATE

Sample

**IN THE COURT OF LEARNED ASSISTANT JUDGE,
COURT NO., DHAKA.**

TITLE SUIT NO. OF 2017.

Karim Leathers Limited, a private limited company incorporated under the Companies Act, 1994 having incorporation No. C- $\frac{10813}{709}$ of 1982-1983 dated 8.06.1983, address: 180, Hazaribagh, Dhaka, represented by its Managing Director Momtazul Karim Ansari.

..... **Plaintiff.**

–Versus–

1. Mrs. Marium Akhter, wife of late Md. Rezaul Karim Ansari,
2. Md. Mahmudul Karim Ansari, son of late Md. Rezaul Karim Ansari,
3. Momtazul Karim Ansari, son of late Md. Rezaul Karim Ansari,
4. Manjurul Karim Ansari, son of late Md. Rezaul Karim Ansari,
5. Redwan-ul Karim Ansari, son of late Md. Rezaul Karim Ansari,
Address of all: House No. 82, Road No. 11/A (New), Dhanmondi R/A, Dhaka.

.....Defendants.

6. The Deputy Commissioner, Dhaka, the office of Deputy Commissioner, District Collectorate Building, Dhaka.
7. Additional Deputy Commissioner, Revenue, District Collectorate Building, Dhaka.
8. Assistant Commissioner of Land, Dhanmondi, Dhaka.

.....Pro-forma Defendants.**Suit for declaration and record correction.****Suit valued at Tk. 3,50,000 only.**

The humble petition on behalf of the plaintiff :

1. That this is a suit for declaration of title of the plaintiff company in the land measuring 1 (one) acre (more or less) National Tannery, 180, Hazaribagh, Mouza- Ghazmahal, S.A. Mutation, S.A. Dag Nos. 146, 144, 145 and 147, P.S- Dhanmondi- previously and present- Hazaribagh, Dhaka as described in Schedule ‘A’ and also for correction of Dhaka City Jarip Khatia No. 300, Dag No. 802, Mouza- Ghazmahal, Police Station- Dhanmondi, J.L No. 7, Dhaka as described in schedule ‘B’.
2. That the defendant Nos. 1-5 are the successors of late Md. Rezaul Karim Ansari, the proforma defendant No. 6 is the Government of Bangladesh, represented by its Deputy Commissioner, the office of Deputy Commissioner, District Collectorate Building, Dhaka, the proforma defendant No. 7 is the Additional District Commissioner, Revenue, District Collectorate Building, Dhaka, the proforma defendant No. 8 is the Assistant Commissioner of Land, Dhanmondi, Dhaka.
3. That the addresses given in the cause title are correct addresses for the purpose of service of summons / notices etc., upon the parties.

4. That the plaintiff company purchased the Schedule 'A' land from the Government of Bangladesh, represented by its Deputy Secretary, Ministry of Industry by Registered Deed of Sale being No. 1589 dated 7.04.1987. The name of the plaintiff company for the Schedule 'A' land was duly recorded in RS Khatian No. 2, RS Dag Nos. 713 and 716, SA Mutation No. 2/14, SA Dag Nos. 146, 144, 145 and 147.
5. That initially there were only 2 (two) directors-shareholders in the plaintiff company. Between them, Md. Rezaul Karim Ansari was the Managing Director of the plaintiff company. Subsequently, some shares of the plaintiff company was transferred to the defendant No. 3 who is now the Managing Director of the Company.
6. That said Md. Rezaul Karim Ansari died on 22.03.2015. After his death, his 5 (five) successors i.e. the defendant Nos. 1-5 became the shareholders of his shares in the plaintiff company. When the defendant Nos. 1-5 came in the management of the plaintiff company, they found that during Dhaka City Jarip operation, the name of late Md. Rezaul Karim Ansari came in the Dhaka City Jarip (as mentioned in the Schedule 'B'), while in the said Jarip the plaintiff-company has shown as the possessor of the Schedule 'A' land. For past few years, revenues have been paid accordingly. For ready reference, the short overview of Dhaka City Jarip is quoted below—

বিভাগঃ ঢাকা।		জেলাঃ ঢাকা		থানাঃ ধানমন্ডি		মৌজাঃ গজমহল		জে.এল নংঃ ৭		ঢাকা সিটি জরিপ		রেঃ সাঃ নংঃ *
মালিক, অকৃষি প্রজা বা ইজারাদারের নাম ও ঠিকানা	অংশ	রাজস্ব	দাগ	জমির শ্রেণী		দাগের মোট পরিমাণ		দাগের মধ্যে অত্র খতিয়ানের অংশ		অংশানুযায়ী জমির পরিমাণ	দখল বিষয়ক বা অন্যান্য বিশেষ মন্তব্য	
১	২	৩	৪	কৃষি ৫(ক)	অকৃষি ৫(খ)	একর ৬(ক)	একর ৬(খ)	৭	একর ৮(ক)	শতাংশ ৮(খ)	৯	
মালিক দং রেজাউল করিম আনছারী পিং ফজলুল করিম আনছারী ১৮০ নং হাজারীবাগ, ঢাকা।	১.০০		৮০২		ঢানারী			১.০০০	১	০০৭২	দালান/১, মেসার্স করিম লেদার লিঃ	
<p>প্রত্যয়ন করা যাইতেছে যে, অত্র খতিয়ান কপি ১৯৫০ সালের রাষ্ট্রীয় অর্জন ও প্রজাস্বত্ব আইনের ১৪৪(৭) ধারা মতে এবং ঐ একই আইনের ১৯৫৫ সালের বিধিমালার ৩২ ও ৩৩ বিধিমতে প্রস্তুত ও প্রকাশিত স্বাতুলিপির অবিকল অনুলিপি।</p> <p>স্বাঃ/-অস্পষ্ট (মোহাঃ জিল্লুর রহমান) রাজস্ব অফিসার ও প্রকাশনা অফিসার</p>												
.....ধারামতে নোট বা পরিবর্তন মায় মোকদ্দমা নং এবং সন।	১.০০	মোট জমি : ঈরিবার পরিকল্পনা গ্রহণ করুন।								১	০০৭২	

মুদ্রণ : সেটেলমেন্ট প্রেস, ঢাকা। তারিখ : ২২-০৪-২০১০

কম্পিউটার কোড : ১৭৪৪২৭৬-৪৩১২০৮২

7. That it is pertinent to mention that the Schedule 'A' land was never transferred to late Md. Rezaul Karim. The suit land was purchased by the plaintiff company in its own name who is a distinct personality apart from its Ex-Managing Director late Md. Rezaul Karim Ansari and its other shareholders-directors. The plaintiff company has never transferred the land in the name of late Rezaul Karim Ansari or any other person. The plaintiff company is the absolute owner and possessor of the Schedule 'A' land. But, during Dhaka City Jarip Operation, the schedule 'A' land was inadvertently recorded in the name of the Ex-Managing Director of the plaintiff company, which should be corrected for securing the right, title and interest of the plaintiff company in the suit land in the manner as described in Schedule 'C'.
8. That the defendants has no personal right, interest or claim in the Schedule 'A' land. Under the circumstances, the Schedule 'B' Jarip should be corrected in the name of the plaintiff company in lieu of the name of late Md. Rezaul Karim Ansari.
9. That cause of action for filing of the suit arose when the Dhaka City Jarip as mentioned in Schedule 'B' was published, when the plaintiff came to know about it and lastly on 9.03.2017 when the plaintiff went to the office of the proforma defendant Nos. 6-9 in order to correct the aforesaid City Jarip but the said defendants refused to do so without permission of the Court and the same is still continuing.
10. That this suit has been file for simple declaration and consequently, fixed court fee of Tk. 300/- has been affixed with the plaint.
11. That suit land being schedule 'A' of the petitioner No.1 is situated at Hazaribagh, Dhaka; consequently, this learned Court has both pecuniary and territorial jurisdiction in the subject matter of the present suit.

Wherefore, this Learned Court would graciously be pleased to—

- (a) for declaration of title of the plaintiff company for the Schedule 'A' land;
- (b) for direction upon the defendant Nos. 6-8 for correction of Dhaka City Jarip as described in the Schedule 'B' in the name of the plaintiff company in lieu of the name of late Md. Rezaul Karim Ansari in the manner as described in the Schedule 'C';
- (c) for declaring that the incorrect Dhaka City Jarip as described in the Schedule "B" is illegal, not correct and binding upon the plaintiff company;
- (d) grant such other or further relief or reliefs which as to your honour may seem fit and proper under law and equity.

Schedule 'A'

Total land measuring 104 decimals (1.4 acre), District- Dhaka, Police Station (New)- Hazaribagh, (old)- Dhanmondi, Sub-Registry Office- Mohammadpur, 180, Hazaribagh, Dhaka, Mouza- Gazmahal, JL No-C.S 248, S.A 74, R.S 1, Dhaka City Jorip 7, C.S Khatian 78,61,124,129,109, S.A. Khatian No. 2, C.S & S.A. Dag Nos. 119, 146, 144, 145, 128 & 147, S.A. Mutation Khatian No. 2/14, Joot 102/2, R.S. Khatian No. 2 & 4, R.S. Dag Nos. 716 & 713, Dhaka City Jarip Khatin 300, Dhaka City Jarip Dag 802.

Surrounded by:

On the North : 40 feet pucca road

On the South : Bikrampur Tannery

On the East : Hossain Brothers

On the West : 40 feet pucca road

Schedule 'B' (incorrect jarip)

খতিয়ান নং- ৩০০

ঢাকা সিটি জরিপ

বিভাগ : ঢাকা।

জেলা : ঢাকা

থানা : ধানমন্ডি

মৌজা : জে.এল নং : ৭

রেঃ সাঃ

গজমহল

নংঃ*

মালিক, অকৃষি প্রজা বা ইজারাদারের নাম ও ঠিকানা	অংশ	রাজস্ব	দাগ	জমির শ্রেণী		দাগের মোট পরিমাণ		দাগের মধ্যে অত্র খতিয়ানের অংশ	অংশানুযায়ী জমির পরিমাণ		দখল বিষয়ক বা অন্যান্য বিশেষ মন্তব্য
				কৃষি ৫(ক)	অকৃষি ৫(খ)	একর ৬ (ক)	একর ৬ (খ)		একর ৮ (ক)	শতাংশ ৮(খ)	
মালিক দং রেজাউল করিম আনছারী পিং ফজলুল করিম আনছারী ১৮০ নং হাজারীবাগ, ঢাকা।	১.০০		৮০২		ট্যানারী			১.০০০	১	০০৭২	দালান/১, মেসার্স করিম লেদার লিঃ
<p>প্রত্যয়ন করা যাইতেছে যে, অত্র খতিয়ান কপি ১৯৫০ সালের রাষ্ট্রীয় অর্জন ও প্রজ্ঞাপত্র আইনের ১৪৪(৭) ধারা মতে এবং ঐ একই আইনের ১৯৫৫ সালের বিধিমালার ৩২ ও ৩৩ বিধিতে প্রস্তুত ও প্রকাশিত স্বাক্ষরিত অবিবর্তনীয় নথি।</p> <p>স্বাঃ/অস্পষ্ট (মোহঃ জিল্লুর রহমান) রাজস্ব অফিসার ও প্রকাশনা অফিসার</p>											
.....ধারামতে নোট বা পরিবর্তন মায় মোকদ্দমা নং এবং সন।	১.০০	পমাট জমি : ঈরিবার পরিকল্পনা গ্রহণ করুন।							১	০০৭২	

মুদ্রণ : সেটেলমেন্ট প্রেস, ঢাকা। তারিখ : ২২-০৪-২০১০

কম্পিউটার কোড : ১৭৪৪২৭৬-৪৩১২০৮২

Schedule 'C' (to be corrected as)

খতিয়ান নং- ৩০০

ঢাকা সিটি জরিপ

বিভাগ : ঢাকা।

জেলা : ঢাকা

থানা : ধানমন্ডি

মৌজা : জে.এল নং : ৭

রেঃ সাঃ

গজমহল

নংঃ*

মালিক, অকৃষি প্রজা বা ইজারাদারের নাম ও ঠিকানা	অংশ	রাজস্ব	দাগ	জমির শ্রেণী		দাগের মোট পরিমাণ		দাগের মধ্যে অত্র খতিয়ানের অংশ	অংশানুযায়ী জমির পরিমাণ	দখল বিষয়ক বা অন্যান্য বিশেষ মন্তব্য	
১	২	৩	৪	কৃষি ৫(ক)	অকৃষি ৫(খ)	একর ৬ (ক)	একর ৬ (খ)	৭	একর ৮ (ক)	শতাংশ ৮(খ)	৯
করিম লেদার্স লিমিটেড (একটি প্রাইভেট লিমিটেড কোম্পানি)	১.০০		৮০২		ঢ্যানারী			১.০০০	১	০০৭২	দালান/১, মেসার্স করিম লেদার লিঃ
<p>প্রত্যয়ন করা যাইতেছে যে, অত্র খতিয়ান কপি ১৯৫০ সালের রাষ্ট্রীয় অর্জন ও প্রজাস্বত্ব আইনের ১৪৪(৭) ধারা মতে এবং ঐ একই আইনের ১৯৫৫ সালের বিধিমালার ৩২ ও ৩৩ বিধিমতে প্রস্তুত ও প্রকাশিত স্বাতন্ত্র্যপূর্ণ অবিকল অনুলিপি।</p> <p>স্বাঃ/অস্পষ্ট (মোহাঃ জিল্লুর রহমান) রাজস্ব অফিসার ও প্রকাশনা অফিসার</p>											
.....ধারামতে নোট বা পরিবর্তন মায় মোকদ্দমা নং এবং সন।	১.০০	মোট জমিঃ ঈরিবার পরিকল্পনা গ্রহণ করুন।							১	০০৭২	

মুদ্রণ : সেটেলমেন্ট প্রেস, ঢাকা। তারিখ : ২২-০৪-২০১০

কম্পিউটার কোড : ১৭৪৪২৭৬-৪৩১২০৮২

And for which act of kindness the plaintiff as in duty bound shall ever pray.

VERIFICATION

Whatever statements have been given in this
 plaint are true to the best of my knowledge and
 belief and I have signed this verification today
 the day of, 2017, at
A.M. in the chamber of my learned
 Advocate, at Dhaka.

Deponent

The deponent is known to me and identified by
 me.

Advocate

Sample

IN THE COURT OF JOINT DISTRICT JUDGE, COURT NO., DHAKA.

TITLE SUIT NO. OF 2019.

Raquiba Banu, wife of Fakhrul Islam and daughter of Rajia Sarder, of House No. 29, Road No. 30, Gulshan-1, Post Office- Gulshan-1212, Gulshan, North Dhaka City Corporation, Dhaka.

.....**Plaintiff**

–*Versus*–

1. Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka.
2. Rajdhani Unnayan Kartipakkha (RAJUK), represented by its Chairman, RAJUK Bhaban, RAJUK Avenue, Motijheel, DIT Avenue , Dhaka-1000.
3. Bangladesh Cantonment Board represented by its Chairman, of Head Office, Army Headquarters, Dhaka Cantonment, Dhaka-1206.
4. The Chief Executive Officer, Cantonment Board, Dhaka.
5. The Project Director, of Mirpur- Kalshi- E.C.B. Chatter 150 feet Road Works Project, address: North Dhaka City Corporation, 23-26, Gulshan Centre Point, Gulshan, Dhaka.
6. The Deputy Commissioner, Dhaka, of the office of the Deputy Commissioner, Dhaka.
7. Land Acquisition Officer, Branch-2, office of Deputy Commissioner, Dhaka.
8. The Mayor, Dhaka North City Corporation, Dhaka

.....**Defendants**

Suit for declaration of title and permanent injunction.

Suit valued at Tk. 3,00,00,000/- (Taka Three Crore) only.

The humble petition on behalf of the plaintiff—

1. That the plaintiff is a law abiding, peace loving and permanent citizen of Bangladesh.
2. That the defendant No. 1 is Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka, the defendant No. 2 is the Rajdhani Unnayan Kartipakkha (RAJUK), represented by its Chairman, RAJUK Bhaban, RAJUK Avenue, Motijheel, DIT Avenue, Dhaka – 1000, the defendant No. 3 is the Chief of Army, Bangladesh Army, Head Office, Army Headquarters, Dhaka Cantonment, Dhaka – 1206, the defendant No. 4 is the Chief Executive Officer, Cantonment Board, Dhaka, the defendant No. 5 is the Project Director, of Mirpur-Kalshi-E.C.B. Chatter 150 feet Road Works Project, address: North Dhaka City Corporation, 23-26, Gulshan Centre Point, Gulshan, Dhaka, the defendant No. 6 is the Deputy Commissioner, Dhaka, of the office of the Deputy Commissioner, Dhaka, the defendant No. 7 is the Land Acquisition Officer, Branch-2, office of Deputy Commissioner, Dhaka and the defendant No. 8 is the Mayor, Dhaka North City Corporation, Dhaka.
3. The addresses given above are correct address for the purpose of service of summons and notices, upon the parties.
4. That the plaintiff is the owner and possessor of the land as described in the schedule below. Her name was duly recorded in all the relevant records including latest Dhaka City Jarip and mutation khatian. There is no dispute from any corner regarding her title and possession in the scheduled land.
5. That the Government acquired land from Mouza- Jowar Shahara, Thana-Cantonment, District- Dhaka earlier. In the said Mouza, the land of the plaintiff as described in the schedule is situated. During that acquisition, land measuring .42 decimals Nal from the total land measuring 79.20 decimals of the plaintiff was acquired vide L.A. Case No. 09/2006-2007, against which the plaintiff was given compensation in the year 2011. The concerned authorities demarcated the schedule land finally in the said L.A. Case. Therefore, now there is neither any scope for the defendants to go beyond the said demarcation nor to interfere into the schedule land of the plaintiff.
6. That after acquisition of said 42 decimals there left 37.20 decimals for the plaintiff out of her total 79.20 decimals of schedule land. The Government acquired the land for constructing Mirpur-Kalshi-E.C.B. Chatter 150 feet Road for the public at large. But at time of carrying out the said construction work the defendant Nos. 3-5 very illegally and arbitrarily on 24.12.2018 encroached into the land of the plaintiff going beyond the demarcation and determination of land as marked by the defendant No. 5 earlier at the time of said acquisition vide L.A. Case No. 09/2006-2007. By this way the defendant Nos. 3-5 illegally entered 10 feet length, 220 feet width, in total 2,200 feet into the land of the plaintiff from the North side, which is clearly evident from the Map.
7. That regarding the violation and illegal encroachment/construction into the land of the plaintiff, the plaintiff and her son requested the defendants for several times. But the defendants paid no heed to any of the requests of the plaintiffs and her son.
8. That on 30.05.2018 the defendant No. 5 informed the plaintiff and others about demarcation of land. Thereafter, they went to the said land and verbally fixed the date of survey and demarcation of land on 5.06.2018 but no such survey or demarcation was

conducted by them. Against the same, the son of the plaintiff again on 6.06.2018 requested the defendants Nos. 3-5 to demarcate the land. In response, the defendant No. 5 informed vide letter dated 7.06.2018 that due to absence of the defendant No. 6 they could not conduct survey and demarcate the land.

9. Thereafter, the son of the plaintiff requested the defendant No. 6 to conduct survey and demarcate the land as per the original acquisition vide letter dated 19.06.2018. Before the said letter met with any response from the office of the defendant No. 6 in this regard, the defendant Nos. 3-5 illegally entered into the land of the plaintiff, broke the boundary wall, destroyed the structures thereof, dug soil and started their works. Being aggrieved thereof, the plaintiff lodged a GD on 25.12.2018 having entry No. 1103 with the Dhaka Cantonment Police Station, Dhaka.
10. That on 26.12.2018 the office of the defendant Nos. 6-7 informed the office of the defendant Nos. 3-5 about the carrying out of said works by the defendant Nos. 3-5 before settling the dispute regarding demarcation in the following manner—

“উপর্যুক্ত বিষয়ে জনাব রাজী মোঃ ফখরুল, মাননীয় সংসদ সদস্য, কুমিল্লা-৪ এর আবেদনের প্রেক্ষিতে জানানো যাচ্ছে যে, ০৯/২০০৬-২০০৭ নং এল এ কেসের মাধ্যমে অধিগৃহীত জোয়ার সাহার মৌজার, আর এস-৭০১ নং দাগের অধিগৃহীত ভূমির সীমার সংক্রান্ত জটিলতা নিরসনের লক্ষ্যে সূত্রোক্ত স্মারকে একটি কমিটি গঠন করা হয়। পরবর্তীতে বেগম রাকিবা বানু (মাননীয় সংসদ সদস্য, কুমিল্লা-৪ এর মাতা) ২৬/১২/২০১৮ খ্রিঃ তারিখের আবেদনে জানান যে, সীমানা পরিমাপের বিষয়টি নিরূপন হওয়ার পূর্বেই ১৭ ইসিবি কর্তৃক আবেদনকারীর সীমানা প্রাচীর ভেঙ্গে রাস্তা প্রশস্ত করণের জন্য গর্ত করা হচ্ছে।

০২। উল্লেখ্য যে, একাদশ জাতীয় সংসদ নির্বাচন সমাগত প্রায়। এমতাবস্থায়, গঠিত কমিটির পরিমাপ/প্রতিবেদন প্রাপ্তির পর এ বিষয়ে ব্যবস্থা গ্রহণের জন্য ও সূষ্ঠা আইন শৃঙ্খলা পরিস্থিতির স্বার্থে বর্ণিত রাস্তার সম্প্রসারণ কার্যক্রম স্থগিত রাখার জন্য নির্দেশক্রমে অনুরোধ করা হল।”

11. That after said encroachment into the schedule land of the plaintiff on 24.12.2018, the plaintiff submitted several representations before the concerned authorities. By dint of that position, the defendants are now not coming up for entering/encroaching into the schedule land of the plaintiff, and the construction work of the defendants thereon is stopped now. Under the circumstances, though the plaintiff is in absolute possession in the suit land, it is highly apprehended by the plaintiff that the defendants may come at any time for evicting the plaintiff from the schedule land and carrying out their construction work thereon. This illegal and arbitrary action of the defendants does not only cloud the possession of the plaintiff but also cloud her title in the suit land. Moreover, on 1.04.2019 some of the officers of the defendants again came into the land of the plaintiff and warned that if the plaintiff would not make the schedule land vacant by next fifteen days amicably, then the plaintiff will be evicted forcefully without giving any notice to that effect.
12. That since the plaintiff is the absolute owner and possessor of the suit land, her name was duly recorded in the relevant records having proper namjari and jomabagh case and there is no dispute from any corner regarding her title in respect of schedule land; therefore the plaintiff is entitled to a declaration of title in the suit land from this court.
13. That the said action of the defendants Nos. 3-5 encroaching into the land of the plaintiff by going beyond the demarcation and determination of land is violation of legal rights of the plaintiff. Moreover, because of invasion by the defendants, the plaintiff will not get adequate pecuniary compensation as because the encroached portion of land has not been

acquired ever by the government. Hence, the defendants should be restrained by an order of permanent injunction from further construction on/encroaching into the said schedule land until the demarcation and determination of the said schedule land is completed. For that reason, the defendants are required to be restrained by an order of permanent injunction.

14. That that the defendants Nos. 3-5 have violated the plaintiff's right to get protection of law and right to property as enshrined under Articles 31 and 42 of the Constitution of the People's Republic of Bangladesh. As such, the defendants are liable to be restrained by an order of permanent injunction from entering/encroaching into the schedule of the plaintiff for ends of justice.
15. That earlier the plaintiff-petitioner filed as Writ Petition No. 283/2019 before the Hon'ble High Court Division but got the same as not pressed rejected because the Hon'ble Court verbally observed that since disputed question of fact as to demarcation of land is involved, therefore the plaintiff-petitioner should resolve the matter through civil court.
16. That cause of action for filing of the suit arose on 24.12.2018 when the defendants destroyed the boundary wall of the plaintiff in the schedule land, and thereafter on several dates when the plaintiff submitted representations before the defendants but found no response thereon and on 1.04.2019 when some of the officers of the defendants again came into the land of the plaintiff and warned that if the plaintiff would not leave the land within next fifteen days, she will be forcefully evicted, and the same is still existing.
17. That this suit has been filed for declaration of title and permanent injunction and the highest advalorem court fee has been properly affixed with the plaint.
18. That the dispute land has been situated at Mouza-Jowar Shahara, Thana- Cantonment, District- Dhaka. Therefore, this learned Court has both pecuniary and territorial jurisdiction in the subject matter of the present suit.

Wherefore, this Learned Court would graciously be pleased to—

- (a) pass a decree declaring that the plaintiff is the absolute owner and possessor of the suit land which has been described in the schedule below;
- (b) pass a decree of permanent injunction restraining the defendants from entering/encroaching into the schedule land of the plaintiff;
- (c) pass a decree declaring that the defendants cannot intervene/interfere into the schedule land as earlier demarcated in L.A. Case No. 09/2006-2007 for ends of justice;
- (d) award costs of the suit in favour of the plaintiffs;
- (e) grant such other or further relief or reliefs which as to your honour may seem fit and proper under law and equity.

And for which act of kindness the plaintiff-petitioner as in duty bound shall ever pray.

Schedule of the Property

All that piece and parcel of the immoveable property measuring 37.20 decimals situated at Mouza- Jowar Shahara, Thana-Cantonment, District- Dhaka, CS Khatian No. 122, SA Khatian No. 439, RS Khatian No.438, City Jarip Khatian No. 12908 and CS Dag No. 597, RS Dag No. 701, City Jarip Dag No. 34338, butted and bounded by

In the East : Land of BJ Tower Bhaban.

In the West: Land of Online Group and Mr. Abdul Goni alias Goni Mia.

In the South: Land of Online Group.

In the North: Mirpur-Kalshi-ECB Chatter Road.

VERIFICATION

Whatever statements have been given in this plaint are true to the best of my knowledge and belief and we have signed this verification today the day of, 2019, atA.M. in the chamber of my learned Advocate, at Dhaka.

Deponent

The deponent is known to me and identified by me.

Advocate

3. Written Statement in Artha Rin Suit

Like plaint in Artha Rin Suit, the particulars to be contained in written statement in Artha Rin Suit are also stated under Section 9 in the following manner—

ধারা ৯। লিখিত জবাব :

- (১) আদালত কর্তৃক জারীকৃত সমনে নির্ধারিত তারিখে বিবাদী আদালতে হাজির হইবেন এবং লিখিত জবাব দাখিল করিয়া বাদীর দাবী সম্পর্কে জবাব থাকিলে উহা উপস্থাপন করিবেন।
- (২) বিবাদী তাঁহার বক্তব্যের সমর্থনে কোন দলিলের উপর নির্ভর করিলে এবং ঐ দলিল তাঁহার দখলে থাকিলে, উক্ত দলিল বা উহার সত্যায়িত ফটোকপি একটি তালিকায় অন্তর্ভুক্ত করিয়া লিখিত জবাবের সহিত ফিরিস্তি সহকারে দাখিল করিবেন।
- (৩) বিবাদী তাঁহার জবাবের সমর্থনে সাক্ষ্য হিসাবে তাঁহার দখল বা নিয়ন্ত্রণে নাই এমন কোন দলিলের উপর নির্ভর করিলে, উক্ত দলিল বা দলিল সমূহের একটি তালিকা, ঐগুলি কাহার দখলে আছে, নাম-ঠিকানা উল্লেখপূর্বক, লিখিত জবাবের সহিত দাখিল করিবেন।

- (৪) উপ-ধারা (২) ও (৩) এর বিধানের ব্যত্যয়ে, পরবর্তীতে কোন দলিল বিবাদী দাখিল করিলে, আদালত, সংগত কারণ ও খরচ প্রদান ব্যতিরেকে উহা গ্রহণ করিবে না; এবং প্রদেয় খরচ সরকারি রাজস্ব হিসাবে নির্ধারিত খাতে জমা হইবে।
- (৫) বাদীর দাবী বা উহার কোন অংশ বিবাদী স্বীকার করিয়া থাকিলে বিবাদী উক্ত স্বীকৃতির বিবরণ লিখিত জবাবের একটি দফায় সুস্পষ্টভাবে অন্তর্ভুক্ত করিবেন।
- (৬) বাদীর দাবী বা দাবীর কোন অংশ অস্বীকার করিলে, বিবাদী লিখিত জবাবের একটি দফায় উহার পরিমাণ এবং অস্বীকারের সমর্থনে কারণ বা যুক্তি সুস্পষ্টভাবে উল্লেখ করিবেন।
- (৭) লিখিত জবাবের একটি দফায় বিবাদী বা বিবাদীগণের পক্ষে কার্যকারক হিসাবে কে দায়িত্ব পালন করিবেন উহা উল্লেখ করিতে হইবে।
- (৮) এই ধারার অধীনে বিবাদী লিখিত জবাব দাখিল করার সময়, লিখিত জবাব ও সংযুক্ত কাগজাদির একটি অনুলিপি বাদীর জন্য আদালতে দাখিল করিবে।

Sample

BEFORE THE JUDGE, 2nd ARTHA RIN ADALAT, DHAKA
ARTHA RIN SUIT NO .117/2018

Bangla Bank Limited

VERSUS

Pacific Design and others

..... **Plaintiff**

..... **Defendants**

Subject : Written Statement on behalf of the defendant Nos. 1 & 3.

The humble submission on behalf of the aforesaid defendant Nos. 1 & 3-

1. That the defendant no. 01 is a private limited company duly incorporated under the Companies Act, 1994 and is conducting its business with sublime reputation in compliance with relevant laws of the country since its incorporation.
2. That the defendant no. 03 is the Managing Director of defendant no. 01 and also a law abiding citizen of Bangladesh who hails from a respected family.
3. That the defendant no. 01 & 03 has been doing business with the instant plaintiff as their trustworthy clients for a long time and has been maintaining good business relationship. But the instant plaintiff, without valuing the good relationship which once they shared in-between, very malafide filed this instant suit which is completely against the banking norms and behavior prevalent in the country.
4. Except clear and unequivocal admission, the instant defendants are vigorously denying all the claims of the plaintiff and the burden of proof totally lies with the plaintiff to prove its claims.
5. That the suit is barred by law and not maintainable in its present form as per the relevant provision of law.

6. That the suit is barred by principle of estoppel, waiver and acquiescence and hence liable to be rejected on the face of it.
7. That the suit is barred by the law of limitation and thus liable to be rejected. As there is clear provision in the relevant law to file a Artha Rin Suit within the prescribed period, no suit is maintainable after the expiration of such period. As the instant suit is being instituted after the expiration of such period, the suit is liable to be rejected and should be nipped in the bud at its threshold under section 46 of the Artha Rin Adalat Ain, 2003.
8. That the plaintiff has failed to establish any prima facie and arguable case through its plaint and as a result the instant suit is not maintainable and tenable in the eye of law and liable to be rejected.
9. That the statement made in paragraph no. 01, 02 & 4 are matter of record; hence the instant defendants call for no comments.
10. That the statements made in paragraph no. 03 are not true and it is completely false that they are the guarantors and mortgagor of the said loan; hence vigorously denied by the instant defendants and the burden of proof completely lies with the plaintiff to prove its claims.
11. That the statements made in paragraph no. 05-28 are not true and completely false, frivolous and based upon forged documents; hence all the claims and statement made in those paragraphs is vigorously denied by the instant defendants and the burden of proof completely lies with the plaintiff to prove his claims.
12. That the claims made by the plaintiff in its plaint is completely false, fallacious and baseless and hence vigorously denied by the instant defendant. Because, in the sanction letters as well as submitted by the plaintiff, there is no mentioning about the mode of disbursement, time of disbursement and place of disbursement. In fact, the plaintiff is under a legal obligation to mention all the particulars including the mode of disbursement, time of disbursement and place of disbursement. But, very unfortunately, the instant plaintiff has instituted this suit violating all the relevant laws of the country as such the suit instituted by the instant plaintiff is not maintainable in the eye of law.
13. That the claims made by the instant plaintiff are not corroborated by sufficient documents of which the instant plaintiff is bound to produce before the court under the relevant law of the land. It is very apparent that the plaintiff did not produce any account statements at all to corroborate his claim and to prove the actual due of the defendants. In fact, the amount which the plaintiff claimed to be due by the defendants is absolutely fallacious, false and baseless and hence the suit is not maintainable and sustainable in the eye of law and liable to be rejected.
14. That the sanction letters produced by the plaintiff before this honorable court of law is made unilaterally by the bank and the defendants has no knowledge about those sanction letters and is no way connected with these sanction letter. Not only that, the terms and conditions of these sanction letters of which the claims of the plaintiff is based on, are totally unlawful and imposed unilaterally which is nothing sort of utter violation of the relevant laws of the country and all the banking norms and behavior. As a result, these sanction letters are not enforceable in the eye of law which made the instant suit a nugatory one.

15. That the charge documents produced by the defendants before this honorable court of law is made unilaterally by the bank and the defendants has no knowledge about those charge documents and is no way connected with these charged documents. There is clear and apparent discrepancy between the charge documents and sanction letters which very much conspicuous from the documents produced by the plaintiff bank. In fact, the charge documents has been created by the bank with malafide intention and violating the banking norms and behavior of the country of which the bank has no authority to do as the bank deals with public money. This kind of atrocious and malafide activities is equal to 'Fraud on the court' and it is already a well settled principle of law is that 'Fraud vitiates everything'. As the plaintiff has taken the shelter of fraud, all his legal right to seek justice has been extinguished and has no *locus standi* to appear before this honorable court of law.
16. That though the instant plaintiff has submitted some deed of hypothecation in his annexure, but they filed this instant suit without taking any attempt to sell those mortgaged property which is clear violation of the relevant law of the land of which the plaintiff is under a legal obligation to comply with. As the instant plaintiff has filed this instant suit violating the relevant provision of the Artha Rin Adalat Ain, 2003 this plaintiff has lost all his legal right to sue and no cause of action subsist in favor of the plaintiff. Hence, the instant suit is not maintainable in its present form and thus liable to be rejected.
17. That the signature of the instant defendant on the sanction letters, letter of guarantees and other documents is false, fabricated and is not signed by the instant defendants. All these documents have been created by means of fraud and thus is not maintainable in the eye of law. Thus, no suit can be instituted and no proceeding can be continued based upon forged and fraudulent documents and thus liable to be rejected promptly by the honorable court of law.
18. That it is very apparent from the submitted documents that all the sanction letters are not supported by the letter of guarantee signed by the guarantors. These sanction letters were unilaterally created by the plaintiff bank officers as per their whimsical wish without the assent and minimum involvement of the guarantors (defendant nos. 3-5). But, very arbitrarily and malafidely the plaintiff bank claimed the total outstanding due from all the guarantors who are not even liable for the loan liability. Thus, the plaintiff bank unscrupulously filed this suit without assessing the actual liability of the defendants and violating the provision of Artha Rin Adalat Ain, 2003 which amounting to misguiding this honorable court of law. Thus, the suit is liable to be dismissed at its threshold.
19. That the account statements are created by the plaintiff bank's officer as per their own wish. There is no mentioning in the plaint about the amount deposited by the defendants and justification of the interest rate, insurance coverage, amount debited for processing other processes. Thus, the instant plaint is being submitted by abusing the process of law.
20. That the plaintiff has failed to produce all particulars regarding the facts relating to their claim. The plaintiff has failed to produce the charged documents against all the sanction letters, account statement and relevant documents regarding the collateral securities mentioned in the sanction letters. Thus, the instant suit is being instituted by the plaintiff bank violating all the mandatory provisions of the Artha Rin Adalat Ain, 2003 and thus is not maintainable in the eye of law and liable to be rejected.

21. That the instant defendants on several occasions requested the plaintiff bank to produce all the documents relating to their claim but very unfortunately the plaintiff bank did not produce them. The instant defendants are intensively trying to collect all those documents and as soon as the instant defendants being able to collect those documents, the instant defendants will submit additional written statement as necessary.
22. That the interest rate mentioned in the sanction letter is absolutely arbitrary, unlawful and unilaterally imposed by the plaintiff bank upon the defendant no. 01 & 02. The interest imposed upon the said defendants is nothing sort of utter violation of the relevant laws of the country and the Bangladesh bank guidelines. Thus, the instant plaintiff bank has acted *ultra vires* and so, no legal right to sue and cause of action has arisen in favour of the plaintiff bank which made the instant suit nugatory and liable to be dismissed.
23. That the plaintiff bank is a banking company who deals with public money. Moreover, all the officials of the plaintiff bank are public servant under the provision of Bank Companies Act, 1991. But very unfortunately, the instant plaintiff filed this suit violating the lawful duty which has been imposed upon them as such public servant. This kind of malafide and unscrupulous endeavor by the bank officials should be nipped in the bud at its threshold for securing the justice of the instant defendants and the public at large. Thus, the instant suit is completely illegal and unsustainable in the eye of law and liable to be dismissed.

WHEREFORE, it is prayed that your honour would graciously be pleased to reject the instant suit for ends of justice and/or pass such other order(s) in favour of the defendants as your honour deem fit and proper.

AFFIDAVIT

I, **Abu Torab**, Son of Late Md. Hatim and Khairunnesa, Address : Village Tower (Level-11), 46 Kemal Ataturk Avenue, Banani, Dhaka, aged about- 33 years, by occupation service, by nationality Bangladeshi, do hereby solemnly affirm and say as follows—

1. That I am the tadbirkar on behalf of the defedant and as such acquainted with the facts and circumstances of this case and competent to swear this Affidavit.
2. That the statements made in this plaint along with submitted documents are true to the best of my knowledge and belief and knowing truth thereof I sign this Affidavit on this the 11th day of June, 2020 at 10.30 a.m.

D E P O N E N T

The deponent is known to me and
identified by me

A D V O C A T E

Sample

**IN THE COURT OF JOINT DISTRICT JUDGE,
3rd COURT, CHITTAGONG.**

MONEY SUIT NO. 14 OF 2015.

Jins 2000 Limited, represented by its Managing Director
and another.

... Plaintiffs

–VERSUS–

Scholastica Private Limited and others.

...Defendants

Written Statement on behalf the Defendant No. 1.

The humble petition on behalf of the aforesaid defendant
no. 1 as follows—

1. That the suit is not maintainable in its present form and manner; thus the same is liable to be dismissed.
2. That the suit is barred by law, principle of waiver and acquittance, hence the same is liable to be dismissed.
3. That the claims which are not specifically admitted here are deemed to be denied.
4. That the statements made in paragraph Nos. 1-2 providing the descriptions of the plaintiff and the defendants are matters of record and the plaintiffs are under strict liability to prove the same.
5. That the statements made in paragraph no. 3 that in the year 2010 the plaintiffs came to know from their one business friend about that the defendant no. 1 company was coming with IPO (Initial Public Offer) in the share market and it was interested to place shares through private placement; after getting that news, the plaintiffs communicated with the Managing Director and arranged a meeting on 5.11.2010 and entered into an oral agreement of purchasing of 600000 ordinary shares @ par value Tk. 10 while at premium value Tk. 70, in total Tk. 4,80,000,00/= (Taka Four Crore and Eighty Lac) are matters of records; hence call for no comments by the defendants. However, it is clear from the aforesaid statement of the plaintiff that they communicated with the defendant company first and voluntarily purchased the shares through private placement.
6. That the statements made in paragraph Nos. 4-10 of the plaint stating that the defendants assured that they had all kinds of permissions to raise fund through private placement, transfer of Tk. 4,80,000,00/= (Taka Four Crore and Eighty Lac) only to the account of the defendant No. 4 as per the direction of the defendant No. 1, the defendant No. 4 is the sister concern of the defendant No. 1, description of account and cheque numbers, encashment of

the said cheque, process of issuing IPO was under process before the BSEC and no step was taken by the defendant to repay the aforesaid amount by the defendants to the plaintiffs are incorrect and misconceived; hence denied by the defendants.

7. That the statements made in paragraph Nos. 11-14 of the plaint stating that the plaintiff repeatedly requested the defendants to return back the aforesaid money, sending demand note on 18.11.2013, issuing of share certificate by the defendant No.1 company to the plaintiffs, transfer of share thereof, sending unsigned Form 117, non mentioning of the aforesaid money in the aforesaid 117 Form, assurance of the issuance of new shares to the plaintiffs are incorrect and misconceived; hence denied by the defendants.
8. That the statements made in paragraph Nos. 15-19 of the plaint stating that the defendants did not issue any papers relating to shares, they misappropriated the aforesaid money and committed serious offence under the security and exchange laws, issuance of 2 (two) share certificate and sending another note by the plaintiffs to the defendants on 1.01.2014 are incorrect and misconceived; hence denied by the defendants.
9. That the statements made in paragraph Nos. 20-23 of the plaint stating that the plaintiffs demanded certain documents from the defendants, sending reminder letter on 16.01.2014, sending legal notice on 25.04.2015 and thereafter sending reply to the legal notice on 11.05.2015 by the defendants, submitting a prayer before the RJSC for search report, basing on which the RJSC provided a report that no such share transfer was taken place by the defendant No. 1 company in favor of the plaintiffs, and thereafter, giving repeated reminder by the plaintiffs to the defendants are misconceived and not presented correctly; hence denied by the defendants.
10. That the fact is that—
 - (i) In the year 2010, the defendant No. 1 company with very sincere intention undertook all the steps to issue shares in the stock market through IPO. The plaintiffs at their own will, voluntarily and without any sort of influence purchased the shares through private placement knowingly well that the defendant no. 1 has yet to get approval from the BSEC for issuing IPO through stock exchanges. The plaintiffs with the intention to gain more interest/profit purchased the shares for trading the same subsequently in the stock market. The defendant No. 1 company in compliance with all legal formalities applied for getting approval from the BSEC (Bangladesh Securities and Exchange Commission) who has yet to approve the application for listing of the defendant No. 1 company. If the BSEC would have allowed/approval the listing of the defendant No. 1 company with the BSEC and the stock exchanges, the defendant No. 1 could have traded the stocks in the stock market by now. However, the defendant No. 1 is at no fault and the application for being listing with stock exchanges is still pending. This is an intervening cause making the defendant No. 1 company unable to trade in the stock market. However, it is an admitted position by the plaintiffs that they voluntarily purchased the shares through private placement.
 - (ii) That the shares were purchased by the plaintiff in the late of 2010 directly from the defendant no. 1 company. Then the defendant no. 1 company undertook all necessary procedures and formalities under law for issuing IPO in the market. Under the

aforesaid circumstances, the BSEC suspended the all exercise of Book Building method under the Securities and Exchange Commission (Public Issue) Rules, 2006 (amended in 2009) until further notification vide notification dated 20.01.2011. Because of such suspension, the raising funds through IPO by the defendant No.1 company became a legal impossibility. Some relevant provisions of the Public Issue Rules, 2006 (amended in 2009) are quoted below—

Rule-2(d): “book-building method” means the process by which an issuer attempts to determine the price to offer its security based on demand from institutional investors;

Rule-2(g): “cut-off price” means the lowest price offered by the bidders at which the total issue could not exhausted;

Rule-2(h): “floor price” means the lowest price of the price band within which the eligible institutional investors shall bid for security under book-building method;

Rule-2(i): “indicative price” means the price which the issuer indicates in the draft prospectus taking input from the eligible institutional investors on which the bidders bid for final determination of price;

Rule-2(o): “public issue” means public issue of security through initial public offering or repeat public offering.

Rule-8(16)(4): Determination of offering price :

- (a) Issuer shall invite for indicative price offer from the eligible institutional investors through proper disclosure, presentation, document, seminar, road show, etc.;
 - (b) Issuer in association with issue manager and eligible institutional investors shall quote an indicative price in the prospectus and submit the same to the Commission with copy to the stock exchanges;
 - (c) Such indicative price range shall be determined as per price indications obtained from at least five eligible institutional investors covering at least three different categories of such investors;
 - (q) There shall be a time gap of 25 (twenty five) working days or as may be determined by the Commission between closure of bidding by eligible institutional investors and subscription opening for general investors.
11. That it is submitted that the plaintiffs are now the shareholders-members of the defendant company. Under section 58 of the Companies Act, 1994 it is legally impossible to return back the plaintiffs’ money or to buy back the shares by the defendant Company. As such they cannot file suit for recovery of money against the defendant company; hence the suit is liable to be dismissed for ends of justice.
 12. That it is submitted that there is no Rules and Regulations regarding purchasing share under the private placement. It is a regular transfer of shares on the basis of mutual understanding between the plaintiffs and the defendant No. 1 company. Such transaction has no relation with raising capital through IPO. Hence the suit is liable to be dismissed for ends of justice
 13. That it is submitted that the plaintiffs being the shareholders of the defendant No. 1 company cannot claim themselves as the creditors to whom the defendant No. 1 is a debtor;

and as such they cannot file suit for recovery of money against the defendant company. A shareholder is the contributory and owner of the rights and liabilities of the company, and a shareholder cannot claim himself as a creditor and cannot file money suit against the company. As such, the suit is liable to be dismissed for ends of justice.

14. That it is submitted that the petitioners being not the IPO purchased shareholders and thereby purchasing shares directly from the defendant no. 1 company through private placement cannot file suit for recovery of money against the defendant no. 1 because it is like filing a case/suit against themselves since they are also the owners and contributories of the company. As such, the suit is liable to be dismissed for ends of justice.
15. That it is submitted that the plaint discloses no cause of action and a money suit filed by the shareholders of the company against the company regarding consideration money given against shares is not maintainable in the present form and manner through civil suit. As such, the suit is liable to be dismissed for ends of justice.

WHEREFORE, it is prayed that your honour would graciously be pleased to dismiss this suit for ends of justice and/or pass such other order(s) granting further relief(s) as your honour deem fit and proper.

And for this act of kindness, the plaintiff as in duty bound shall ever pray.

Verification

The statements made above are true and correct the deponent signed this document before me on.....at my office which I verily believe to be true and genuine.

DEPONENT

The deponent is known to me and identified by me.

(.....)

Advocate

CHAPTER 7

Applications for ad-interim reliefs, rejection of plaint and others

This chapter will provide samples of some applications filed in a pending suit before the subordinate courts. Different types of applications can be filed in a pending suit/case. In fact, in a pending suit/matter i.e. after filing the plaint, the plaintiff can bring anything into the notice or knowledge of the Court or pray interim relief by way of filing application. Similarly, the defendant can also file any kind of application permitted by law in addition/otherwise with the written statement. This kind of application can be filed at any time as allowed by law. These applications may include application for injunction, application for stay, application for amendment/correction, application of adjournment, application for addition of party/striking out of party, application for local inspection/discovery, appointment of advocate commissioner, application for production of documents/witnesses, rejection of plaint, return of plaint, stay of suit, etc. Applications should be very specific and to the point. Some applications may require affidavit, some may need verification, and some may need only declaration of lawyer with the signature of the applicant. In every case, the procedural law should be followed. Generally, the party who files the application is addressed as ‘the applicant’/‘the petitioner’ and the other-sided party as ‘opposite party’. The opposite party can file opposition/counter/written objection to the application.

‘Return of Plaint’ vs. ‘Rejection of Plaint’

Return of Plaint

Where at any stage of the suit, the Court finds that it has no jurisdiction, either territorial or pecuniary or with regard to the subject-matter of the suit, it will return the plaint to be presented to the proper Court in which the suit ought to have been filed. Rule 10A of the Civil Rules and Orders lays down the procedure to be followed by the Court before the plaint is ordered to be returned to be presented to the proper Court. It is inserted to obviate the necessity of serving the summons on the defendants where the return of plaint is made after the appearance of the defendants in the suit. An appellate Court can also return the plaint to be presented to the proper Court. The Judge returning the plaint should make endorsements on it regarding (i) the date of presentation; (ii) the name of the party presenting it; and (iii) reasons for returning it. For not filing of proper Court fees, a plaint can be rejected too. On the preliminary stage of suit i.e. just after filing the suit, the court can only return or reject the plaint on the above grounds, as applicable. None of the aforesaid things happened in this case.

Rejection of Plaintiff

The provision of rejection of plaintiff is only provided under Order VII rule 11 of the Code of Civil Procedure on the following grounds—

- (a) Where it does not disclose a cause of action.
- (b) Where the relief claimed is undervalued.
- (c) Where it is insufficiently stamped.
- (d) Where the suit appears to be barred by any law.

One issue is to be noted that there is clear difference between Order 7 Rule 11(a) Rule 11(b). Rule 11 (a) empowers the Court to look into the merit and contents of the plaintiff whether plaintiff discloses any cause of action or not. But the same has to be done after framing specific issue on that point. Whereas, Rule 11(d) empowers the court to reject the plaintiff on the ground where the relief claimed in the plaintiff is barred under law, thus the very jurisdiction of the civil court is barred under any law to adjudicate the case and award the relief as prayed for. Both (a) and (d) involve the questions of law which can be done after framing specific issue as those points.

Application of Section 151 in Rejection of Plaintiff

Section 26 of the Code of Civil Procedure provides that every suit shall be instituted by the presentation of a plaintiff or in such manner as may be prescribed. Order IV further provides that after institution of each suit, the same shall be numbered and registered as per the admission. Order 4 provides as follows—

“Order IV Institution of Suits

- “(1) Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf a plaintiff together with as many true copies of the plaintiff as there are defendants for service of summons upon such defendants.
- (1a) The Court fees chargeable for service of summons shall be paid in the case of suits when the plaintiff is filed, and in the case of all other proceedings when process is applied for.
- (1b) A plaintiff shall file, along with the plaintiff, for each defendant and a copy of the summons along with a pre-paid registered acknowledgement due cover with complete and correct address of the defendant written on it.
- (2) Every plaintiff shall comply with the rules contained in Orders VI and VII, so far as they are applicable.
- 2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaintiffs are admitted.”

Rules 47 to 55 of Civil Rules and Orders provide the provisions for presentation, registration, etc and examination of plaintiff. For ready reference, the provisions are quoted below—

- “47. Ordinarily the Sheristadar or in his absence the officer acting as a Sheristadar shall be authorized to receive plaintiffs.

48. Every plaint brought for presentation shall have affixed to the top left hand corner of its first page, a slip of paper in the following form, with the particulars required written on it excepting the filing number which should be left blank :

No.
Class of suit
Plaintiff
Defendant
Value of suit
Advocate

Note : It should be particularly noted that additions made by the Supreme Court (High Court Division) to Schedule 1 of the C.P. Code require that every plaint shall be accompanied by the necessary number of its copies, draft forms of summons, and fees for the service thereof, (Or. 7, r. 9(1-A), and a statement of the party's address for service (see rule 18 and Or 6, r. 14-A).

49. (1) Immediately on receipt of a plaint, a serial (consecutive) number shall be marked on it to indicate the sequence of filing, the same number being simultaneously noted on the attached slip of paper. The slip shall then be detached, stamped and made over to the person presenting the plaint, then and there. These numbers shall be quoted in all papers that may be filed hereafter in connection with the plaints so long as they are not registered.

Note : All plaints shall be marked with filing number on the same day they are filed and the slips attached shall be delivered forthwith.

(2) All such plaints shall be entered at once in the prescribed register No. (R) 12-A called the Filing Register in the order in which they have been filed.

Note : A separate volume shall be opened for each class of suits from the beginning of January each year. The number in the Filing Register will be the same as the number in the General Register of suits.

50. All plaints presented must, on being received be registered (i.e., entered in the Register of Suits) in the same order as they appear in the Filing Register, irrespective of their possible rejection (under Or. 7, R 11) or return (for amendment or presentation to proper Court).
51. Every plaint shall ordinarily be registered on the day it is received and should it be found impossible, for any reason, to register it within 24 hours of its receipt, the fact shall be reported to the presiding Judge of the Court concerned.

Note : Simultaneously with the registration of a plaint and the fixing of the first date, the suit should be entered in advance in that days page of the Diary of the Court under the heading appropriate to the purpose for which the first date is fixed.

52. As soon as possible after registration of the plaint, the first date fixed for the suit and the purpose for which it has been fixed shall be entered in columns 5 and 6 of Filing Register [Form No. (R) 12-A].

53. The first dates fixed for appeals and all petitions (excluding execution petitions) that require registration shall be entered in a register in Form No. (M) 1-Daily register. Entries shall be made therein from day to day until the Form is exhausted. If the same register is used for miscellaneous cases, appeals, etc., they should be grouped separately under the different heads. The presiding Judge shall put his dated signature below the last entry for each day. The register shall be laid at some conspicuous part of the Court room everyday by the sitting hour for inspection by the parties and the Advocate.

Note: Form No. (M) 1-Daily register of Petitions and Appeals Registered shall be destroyed after three months.

54. The date of filing shall be stamped on a plaint as soon as it is filed.
55. (1) On presentation or receipt of a plaint, the Sheristadar of the Court shall examine it in order to find out whether all the requirements of law have been complied with. This examination should be particularly directed to ascertaining, among other things—
- (i) Whether the plaint bears full court-fee stamps in accordance with the valuation put upon it;
 - (ii) Whether it has been properly signed and verified (Or. 6, rr. 14 and 15);
 - (iii) Whether it complies with the requirements of Or. 7, rr. 1, 2, 3, 4, 6, 7 and 8;
 - (iv) Whether it is accompanied by the necessary copies of plaint and process-fees and draft forms of summons (amended Or. 7, r. 9(1-A));
 - (v) Whether the documents attached to the plaint (if any) are accompanied by a list in the prescribed form [Or. 7, r. 9(1), see also r. 9(4)];
 - (vi) Whether it is accompanied by the party's address as required by Or. 6, r. 14-A and contains the necessary particulars (vide rule 21);
 - (vi) Whether in the case of minor plaintiffs and defendants the requirements of Or. 32, rr. 1 and 3 have been complied with and the necessary application supported by an affidavit verifying the fitness of the proposed guardian *ad litem* of the minor defendant (s) has been filed;
 - (viii) Whether the suit is within the pecuniary and territorial jurisdiction of the Court;
 - (ix) Whether the vakalatnama has been properly accepted and endorsed the Advocate [vide rule 822, and in particular sub-rule (6) of the rule], and whether in the case of illiterate executants, the provisions of rules 821 and 822(4) have been complied with.
- (2) The officer examining the plaint is required to certify on the top left hand margin of the first page of the plaint the sufficiency or otherwise of the stamp borne and to note the amount of deficiency, if any. A second certificate is to be appended if and when the deficiency is collected.
- (3) The officer examining the plaint should refer to the presiding Judge if he thinks that it should be returned or rejected for any reason. It will then be for the Judge to deal with the matter.

Note : 1, See also paragraph 1, 2 and 3 of the Civil Suit Instructions manual, 1935.

Note : 2, As to appearance of defendant and filing of written statement, see paragraph 9 to 11, civil Suit Instructions Manual, 1935.

Note : 3. As to the procedure to be followed in cases where there are one or more minor defendants (see rule 124 chapter 6).

Rejection of plaint on ground of maintainability

As per the aforesaid provisions of law, after institution of suit a duty automatically casts upon the Court to go to next step by issuing and serving summons upon the parties under Order 5, which is after chapter 4 of the CPC. On the other hand, the Court may return the plaint on the grounds stated earlier or may raise the question of maintainability only after framing issue on that point. Because, the 'question of maintainability' is absolutely an issue of law which cannot be determined without framing specific issue on that point. Order XIV rule 2 provides that—

“Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.”

Even if the Court finds a plaint is not properly formulated, it may not return or reject the plaint without given with the opportunity of amendment of plaint.

It was held in *Fazlur Rahman vs. Rajab Ali*, 30 DLR (SC) (1978) 30—

“The main consideration underlying the general rule which deprecates piecemeal trial is to avoid a protracted litigation and unnecessary expenditure. The reason behind the special provisions of the Code which seek to give priority to the determination of certain issues before taking up the hearing of other issues appears to be also precisely the same namely, economy of time and expenses. These special provisions are contained in Order 14, Rule 2 and Order 15, Rule 3 of the Code and there is hardly doubt the main object behind these provisions is the shortening of time and the lessening of expenditure. As we have already noticed, the provision of Order 14, Rule 2 is clearly obligatory but under Order 15, Rule 3 of the Code the Court has a kind of discretion. What is necessary is the trial of a suit is to reconcile the special provisions as to the trial of certain issues prior to the determination of the suit on other issues with the general rule deprecating piecemeal trial and to make an harmonious application of the different provisions of the Code.

In the present case it appears that the Court rightly set down the hearing of the suit before framing the issues formally on an issue of law as to the maintainability of the suit which goes to the root of the litigation and raises the question of jurisdiction of the Court to try the dispute. It, however, appears that subsequently this question was completely lost sight of for some time, but as soon as it was brought to the notice of the learned Subordinate Judge, he became alive to it and set down the hearing of the suit on the question of its maintainability indicated above. Having regard to the nature of the dispute raised in the suit there can be no manner of doubt that, the question as to the maintainability of the suit

relates to an issue of law, the decision of which will settle the question of jurisdiction and dispose of the entire suit and as such it clearly comes within the provision of Order 14, Rule 2 of the Code. Under the circumstances, we do not think that the learned Subordinate Judge was wrong in any way in setting down the hearing of the suit on the question of maintainability, the High Court's decision for quick disposal of the suit notwithstanding. We appreciate the anxiety expressed by Mr. N. U. Haider, learned Counsel appearing for Respondents No. 1 and 2 for the expeditious disposal of the suit in which the question as to the validity of an election has been raised but the procedure suggested by him for such disposal, in support of which he has advanced his contentions, is not only contrary to the provision of the Code but is also not likely to serve the purpose of shortening the litigation."

In *Nakul Chandra Saha and Ors. vs. Babu Subash Chandra Sarker*, 4 MLR (AD) (1999) 426 it was held that—

"The learned Single Judge by the impugned Judgment and order made the Rule absolute with the finding that the plaintiff made out a case that it had a right to administer the Trust Estate to the exclusion of defendant No. 1 who was an usurper causing irreparable loss and damage to the trust property and that in view of the nature of allegation the said is not barred under section 42 of the Specific Relief Act and that where a plaintiff seeks for a declaration that he has a right in the suit property to the exclusion of the defendant and asked in the form of a declaration the defendant has no right or title therein the relief prayed for is not outside the ambit of section 42 of the Specific Relief Act. The learned Single Judge also held that the question of maintainability of the suit may be determined at the trial and the plaint could not be thrown out in limini.

Mr. M Nurullah, learned Advocate for the petitioner, submits that from the plaint it appears that defendant No. 1 has been possessing the suit property and conducting the Trust Estate as one of the trustees and the plaintiff having failed to produce any evidence to show that he was ever appointed as trustee of the Estate, he is not entitled to get any declaration of status or right and his prayer being in the plaint was for a negative declaration. The learned Single Judge wrongly not agreeing with the concurrent view of the Courts below who rejected the plaint of the instant suit on the ground that the suit was not maintainable for negative declaration and was barred under section 42 of the Specific Relief Act. He further submits that the learned Single Judge of the High Court Division fell in error of law in holding upon misreading of the plaint that the plaintiff's suit is one in assertion to his own right to deal with the Estate to the exclusion of the defendant No. 1 and, as such, the learned Single Judge fell in error in holding that question of maintainability of the suit cannot be decided under Order VII rule 11 CPC. He also submits that the learned Single Judge was wrong to interfere with the concurrent decision of the Courts below in revisional jurisdiction."

In *Abdul Jalil and others vs. Islamic Bank Bangladesh Ltd.* 20 BLD (AD) (2000) 278, 53 DLR (AD) 12, it was held that—

“It is well settled now that a plaint may be rejected under Order 7 Rule 11 of the Code of Civil Procedure merely on a plain reading of the plaint but in exceptional circumstances the court may invoke its inherent jurisdiction and can throw the plaint out in limini. It is also well settled that the plea of implied bar should be decided on evidence unless the fact disclosed in the plaint clearly indicate that the suit is not maintainable. In exceptional cases recourse may be taken even under section 151 of the Code of Civil Procedure. It is also well settled that in an application for rejection of plaint on the ground of undisclosed cause of action the court should not dissect the plaintiff’s case part by part.”

It has been held in the case of *Bangladesh Jatiya Samabaya Shilpa Samity Ltd. vs. M/S Shan Hosiery, Proprietor Md. Abu Taleb and others*, reported in 12 BLT(AD)(2004) 253, which is quoted below—

“With regard to rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, the High Court Division rightly found that in deciding the question as to whether a plaint is liable to be rejected the court is always required to peruse the plaint only and court is not permitted to travel beyond the plaint to dig out grounds to reject the plaint which is a settled principle of law.”

It has been held in the case of *Ismat Zerin Khan vs. The World Bank and others*, 11 MLR (AD) (2006) 58 that—

“Plaint cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure either on the question of law or on fact before the filing of the written statement by the defendant.”

In an unreported case, *Aa. Na. Ma. Selim Ullah vs. Kamrun Nahar Kamal and others*, Civil Revision No. 3929 of 2014 it was held by the Hon’ble High Court Division that—

Further, after examining the series of decisions of our Apex Court regarding of the Code of Civil Procedure, we may refer some of the decision Order VII Rule 11 reported in *Abdul Malek Sawdagar Vs. Md. Mahbubey Alam*, 57 DLR (AD) 18, *Nur Muhammad Vs. Mainuddin*, 39 DLR (AD) 1; *Abul Khair (Md) Vs. Pubali Bank Ltd.*, 53 DLR (AD) 62, *Bangladesh Shilpa Rin Sangstha Vs. Rahman Textile Mills Ltd.*, 51 DLR (AD) 221, *Nurunnessa Vs. Mohiuddin Chowdhury* 49 DLR (AD) 234, *Eastern Bank Ltd. Vs. Sub-Ordinate Judge*, 49 DLR 531, *Anath Bandhu Guha & Sons Ltd. Through its Attorney Md. Sirajul Hoq Vs. Babu Sudhangshu Shekhar Haider*, 42 DLR (AD) 244, *Kazi (Md) Shahajahan and another Vs. Md. Khalilur Rahman Madbar and others*, 54 DLR (AD) 125 and *Ismat Zerin Khan Vs. the World Bank and others*, 11 MLR (AD) 58, wherein the principles laid down as under:—

- (I) The well settled principle of laws relating to Order VII Rule 11 are that the plaint can be rejected only on reference to plaint itself as whether it is barred in any of the four clauses of Order VII Rule 11 of the Code of Civil Procedure.
- (II) Plaint cannot be rejected on defense material as well as on mixed question of law and fact.
- (III) Where evidence is required and where there is material, plaint cannot be rejected.
- (IV) Plaint can be rejected if it does not disclose a cause of action and barred by any law.
- (V) There is no hard and fast Rule when an application for rejection of plaint is to be filed but ends of justice demands that it must be filed at the earliest opportunity.
- (VI) Plaint cannot be rejected before filing of the written statement.

Now, let us focus in the Indian jurisdiction regarding the principles of rejection of plaint. In the case of *M/S Crescent Petroleum Ltd. Vs. Manchegorsk and another*, AIR 2000 Bom 161 at 168 it has been held that:—

‘This power ought to be used only when the Court is absolutely sure that the plaintiff does not have an arguable case at all. The exercise of this power though arising in Civil Procedure can be said to belong to the realm of criminal jurisprudence and any benefit of the doubt must go to the plaintiff, whose plaint is to be branded as an abuse of the process of the Court. This jurisdiction ought to be very sparingly exercised and only in very exceptional cases. The exercise of this power would not be justified merely because the story told in the pleading was highly improbable or which may be difficult to believe.’

Now, let us consider the inherent power of the Court, where a plaint may be rejected by the Court even the provisions of Order VII Rule 11 of the Code of Civil Procedure are found not to be applicable.

In the case of *Abdul Jalil and others vs. Islamic Bank Bangladesh Limited and others*, reported in 53 DLR (AD) 12, it has been held that:—

“Now it is a well settled principle of law that if the continuation of the suit is found to be an abuse of the process of the court, if the suit is foredoomed or if the ultimate result of the suit is as clear as the day light, the suit should be buried at its inception by rejecting the plaint by invoking inherent powers of the Court provided under section 151 of the Code of Civil Procedure.”

Further, on perusal of the facts of the present case, it appears to be distinguishable from the case reported in 53 DLR (AD) 12. In exceptional situation a plaint can be rejected under Section 151 of the Code of Civil Procedure even if it does not come within the mischief of the Rule, but such situation is absent in the present case.

Now, keeping in mind, all the principles relating to Order VII Rule 11 of the Code of Civil Procedure, we have thoroughly gone through the plaint and considered the submissions of the learned Advocates for both the parties very carefully.

The contentions of the learned Advocate for the petitioner are that the plaint is liable to be rejected as because the alleged registered deed of partition either is not a sale deed or a decree of a court rather it is a family settlement deed among the co-sharers for their ancestral properties and cannot be cancelled at the instance of the two co-sharers as per provision of Section 39 of the Specific Relief Act and further non-consideration of the validity of the impugned registered partition deed under Section 60(2) of the Registration Act, 1908, the trial Court has committed an error of law, in our opinion all these issues have no manner of application in the present case.

Further, the submissions of the learned Advocate for the opposite parties are that the defendants have not yet filed their written statements, are not fully correct as it appears that defendant No. 12 has filed a written statement denying the averments made in the plaint. However, defendant No. 3 who has filed the application for rejection of plaint did not file the written statement.

In the light of the clear pronouncement of law relating to Order VII Rule 11, it is well settled principle of law that to decide the fate of a plaint under Order VII Rule 11 of the Code of Civil Procedure, averments in the plaint have to be read without looking at the defense and as such whether the registered deed of partition is a sale deed or a decree of Court or a family settlement deed among the co-sharers for their ancestral properties and registration and endorsement was genuine, regular and in order and plaintiffs have no possession over the suit land rather the petitioner is in possession of the same, in our view all these issues can only be decided by taking evidence by the trial Court.

It has been decided by our Apex Court in the Case of *Head Mistress, Hazrat Shah Ali Girl's High School Vs. Md. Ibrahim* reported in 65 DLR (AD) 300 that, "The suit cannot be finally adjudicated without taking evidence. The High Court Division acted beyond his jurisdiction and finally adjudicated the case which he cannot do before trial and he also cannot allow the prayer of the plaintiff directly asking authority to give fresh appointment to the plaintiff from the date of dismissal."

Similar view has been expressed in the recent case of *Comprehensive Holdings Ltd. Vs. MH Khan Monju* reported in 69 DLR (AD) 420.

From the above discussions, it appears that the grounds urged for in the application for rejection of plaint are absolutely the subject matter of evidence, which cannot be decided before taking evidence.

Now, on plain reading from the statements of plaint of the present case it is evident that the same clearly discloses the cause of action, the relief claimed is not under valued, the plaint was not written upon the paper insufficiently stamped and not barred by any other law.

So, it is our considered view that the rejection of a plaint is a serious matter and the Court has a duty to examine the plaint very carefully when considering the issues relating to Order VII Rule 11 of the Code of Civil Procedure. It cannot be ordered without satisfying

the requirement of the above said provision and only in very exceptional cases, this power should be exercised.

Considering the above facts and circumstances of the case and after examining the decisions of our Apex Court as well as of the Indian Jurisdiction, we can safely come to a conclusion that the learned Court below has not committed any error of law in rejecting the application, for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, rather the learned Court below rightly passed the impugned Order dated 27.03.2014.”

In another case, *Md. Shofiqur Rahman vs. Bangladesh Bank and others*, Civil Revision No. 878 of 2016 it was held by the Hon’ble High Court Division that—

“To deal with the matter another legal aspect should be taken into consideration whether the present suit can be dismissed on the preliminary point of maintainability without framing any issue of law to the very root of the case, such as on the point of bar of the suit by any provision of law.

Order XIV, Rule 2 clearly indicates that if the court is of opinion that the suit or any part thereof may be disposed of on an issue of law only, it shall try the issue of law even without setting the issues of fact.

The power to try preliminary issue of law is to be exercised only when it is clear that the decision will decide the suit finally once for all.

Now, keeping in view the above settled principles in deciding issues in a suit particularly any issue of law independently, when the present case is considered, it is found that the suit was dismissed by the learned Joint District Judge holding that the same is not maintainable while disposing of an application filed by the plaintiff under Section 151 for staying operation of the publication of the plaintiff's name in the CIB report of Bangladesh Bank classifying him as loan defaulter. On scrutiny of the record it appears that after filing of the suit on 06.04.2016, the plaintiff at once filed an application for stay and only on that connection the learned Joint District Judge on next day by order dated 07.04.2016 held that the suit was not maintainable mainly on the ground that the plaintiff has no locus-standi to sought for a declaration against the report published by the CIB of Bangladesh Bank declaring the plaintiff as loan defaulter. It appears that the trial court without framing any issue in the suit passed the impugned order of dismissal of the suit on the ground of maintainability.

In this connection reliance may be placed to the decisions reported in 30 DLR (AD) 30 and 50 DLR (AD) 1.

Further the court has no option having regard to the provision of Order XIV, rule 2 of the Code of Civil Procedure should not decide the question of maintainability without framing issue on it. Thus the Joint District Judge wrongly decided the question of maintainability of the suit without framing proper issues.- *Reference 48 DLR 367.*”

Sample**IN THE COURT OF JOINT DISTRICT JUDGE, COURT NO. 03, DHAKA.****TITLE SUIT NO. 89 OF 2019.**

Abu Hossain Anowar Jahan and others

.....**Plaintiffs-Petitioners.*****–Versus–***

Rajdhani Unnayan Kartipakkha (RAJUK),
represented by its Chairman, RAJUK Bhaban,
RAJUK Avenue, Motijheel, DIT Avenue, Dhaka-
1000 and others.

.....**Defendants-Opposite Parties.****An application for injunction under Order 39 Rule 1
& 2 read with Section 151 of the Code of Civil
Procedure, 1908.****Application valued at Tk. 3,00,00,000/- (Taka Three
Crore) only.****The humble petition on behalf of the plaintiffs-petitioners :**

1. That the plaintiffs-petitioners are law abiding, peace loving and permanent citizens of Bangladesh.
2. The addresses given above are correct address for the purpose of service of summons and notices, upon the parties.
3. That the plaintiffs-petitioners are the owners and possessors of the land and building as described in Schedule 'A' below. There is no dispute regarding ownership and possession of Schedule land. The plaintiff Nos. 1-6 and the plaintiff No. 7 executed development agreement being Registered Deed No. 1029 dated 8.02.2017 and Registered Deed of Irrevocable General Power of Attorney No. 1030 dated 8.02.2017. Their names were duly recorded in all the relevant records including latest Dhaka City Jarip and mutation khatian. There is no dispute from any corner regarding their title and possession in the scheduled land
4. That after completion of the building the plaintiff No. 7 has already handed-over the portion of the land owners i.e. the plaintiff Nos. 1-6. They have also started to sell the apartments to the prospective buyers. Already possession of some apartments i.e. flat Nos. A-1, A-2, A-3, A-6, A-7, B-1, B-2, B-3, B-5, B-6 and B-7 have been handed-over, though yet to execute registered deeds, which will be done in due course.

5. That the plaintiffs-petitioners developed a 9 (nine) storied building in the Schedule land obtaining due permission from the defendant No. 1. In fact, comparing to the adjacent buildings, the plaintiffs-petitioners left more free space for road than others. The officers of the defendant Nos. 1-6 have also no objection to this effect against the plaintiffs-petitioners. However, suddenly on 12.09.2019 some officers from the defendant Nos. 1-5 went to the schedule premise and dismantled some portions of the building thereon from the back side of right part of the building. The plaintiffs became very frustrated and shocked with the sudden intrusion of the defendant Nos. 1-5. However, the plaintiffs without understanding anything or getting any prior show-cause notice immediately deposited the penalty of Tk. 30,000/- imposed by the office of the defendant No. 1. Subsequently, the plaintiffs-petitioners came to know that on 20.09.2018, 26.12.2018 and 9.09.2019 the plaintiff No. 7 was served with notices by the office of the defendant No. 1 for stopping the development works, but in fact, the plaintiffs-petitioners have never got any such notice. However, after collecting the said notices from the office of the defendant No. 1, it appears that nowhere in the said notices any deviation from the approved plan of RAJUK is mentioned. Thereafter, the plaintiffs somehow came to know that on the basis of complain made by the defendant No. 7, the defendant Nos. 1-6 attempted to demolish the building of the plaintiffs-petitioners without conducting proper survey and giving the plaintiffs any prior show-cause notice.
6. That after collecting the letter of complain made by the defendant No. 7 it appears that there was no specific allegation in the complain and the complain was made on 6.02.2018. In the complain, the defendant No. 7 very illegally and malafide suppressed the fact that the plaintiffs-petitioners and the defendant No. 7 shared the same boundary wall which was built upon mutual consent of both the parties. Therefore, there is no scope for crossing the boundary wall by any structure of the plaintiffs-petitioners.
7. That the aforesaid complain was made in February 2018 but the officers of the defendant Nos. 1-5 came in September 2019 to demolish the structure/building of the plaintiffs without conducting any survey, field work and measurement that as to what extent and how the building of the plaintiffs-petitioners encroached to the land of the defendant No. 7. As such, the action of defendants is not backed by any good reason and principle of law; hence the same is done with malafide intention, illegality and unfairness.
8. That even after depositing the fine amount by the plaintiffs to the office of the defendant Nos. 1-5, and even after requesting them not to dismantle/demolish any part of the building of the schedule land, it is highly apprehended by the plaintiffs-petitioners that the defendants may come at any time for evicting the plaintiffs-petitioners from the schedule land and dismantle/demolish any part of the building in the schedule land. This illegal and arbitrary action of the defendants does not only cloud the possession of the plaintiffs but also cloud their peaceful enjoyment of the building and structure thereon. Moreover, on 9.10.2019 some of the officers of the defendants again came into the land of the plaintiffs-petitioners and warning them to dismantle/demolish the building.
9. That since the plaintiffs-petitioners are the absolute owners and possessors of the suit land, their names were duly recorded in the relevant records having proper namjari and

jomabagh case and there is no dispute from any corner regarding their title in respect of schedule land; therefore the plaintiffs-petitioners are entitled to get the relief claimed.

10. That the said action of the defendants Nos. 1-5 encroaching into the land of the plaintiffs and demolishing the part of the building on the basis of a fraudulent, time-barred, frivolous and malafide complain made by the defendant No. 7 without serving any show cause notice and giving any reasonable opportunity of being heard is violation of legal rights of the plaintiffs-petitioners. Moreover, because of invasion by the defendants, the plaintiffs-petitioners and other occupants thereon shall suffer irreparable loss and injury which cannot be compensated in terms of money. The building in question in the Schedule "A" land is a very well planned, earthquake preventive, well furnished, modern and structurally sound. Demolition of any part of the building will not only destroy the material part of the building but also lead the building to fundamental destruction which shall not be compensated in terms of money and all the occupants in the building will come to road having no other homestead. It will cause serious threat to their life and property as well. Hence, the defendants should be restrained by an order of temporary injunction from demolishing/dismantling the building and structures established in the Schedule "A" land for ends of justice.
11. That that the defendants Nos. 1-5 have violated the plaintiffs' right to get protection of law and right to property. As such, the defendants should be restrained by an order of temporary injunction from demolishing/dismantling the building and structures established in the Schedule "A" land for ends of justice. For that reason, the defendants are required to be restrained by an order of ad-interim temporary injunction.
12. That it is submitted that the prime facie case absolutely goes in favor the plaintiffs since they are the legal owners and possessors of the suit land. Sudden encroachment into the land of the plaintiffs without giving proper opportunity to the plaintiffs and also without identifying the real dispute is illegal, arbitrary, malafide and unlawful, and the same is a clear violation and degradation of the plaintiff's fundamental right to own and enjoy their property without being disturbed by anyone in accordance with law. For that reason, the defendants-opposite parties may kindly be restrained by an ad interim injunction from dismantling/demolishing entire/any part of the building and structures established in the schedule land for ends of justice.
13. That it is submitted that there is a strong arguable case in favor of the plaintiff because they are using the building in compliance with the laws of our country. The plaintiffs-petitioners in due compliance will all the procedures under law completed the building. The defendant-opposite party nos. 1-5 without any cogent reason or calling the plaintiffs-petitioners to explain or giving any reasonable opportunity of being heard took the arbitrary action of demolishing the building of the plaintiffs causing irreparable loss and injury to them which may not be compensated in terms of money. For that reason, the defendants-opposite parties may kindly be restrained by an ad interim injunction from dismantling/demolishing entire/any part of the building and structures established in the schedule land for ends of justice.

14. That it is submitted that the said action of the defendants-opposite parties encroaching into the land of the plaintiffs-petitioners and demolishing the part of the building on the basis of a fraudulent, time-barred, frivolous and malafide complain made by the defendant No. 7 without serving any show cause notice and giving any reasonable opportunity of being heard is violation of legal rights of the plaintiffs-petitioners. Moreover, because of invasion by the defendants-opposite parties, the plaintiffs-petitioners and other occupants thereon shall suffer irreparable loss and injury which cannot be compensated in terms of money. The building in question in the Schedule "A" land is a very well planned, earthquake preventive, well furnished, modern and structurally sound. Demolition of any part of the building will not only destroy the material part of the building but also lead the building to fundamental destruction which shall not be compensated in terms of money and all the occupants in the building will come to road having no other homestead. It will cause serious threat to their life and property as well. For that reason, the defendants-opposite parties may kindly be restrained by an ad interim injunction from dismantling/demolishing entire/any part of the building and structures established in the Schedule "A" land for ends of justice.
15. That it is submitted that considering the balance of convenience and inconvenience, if the defendants are not restrained by an order of temporary injunction, the plaintiffs-petitioners shall suffer severe inconvenience and irreparable loss and injury which may not be compensated in terms of money. For that reason, the defendants-opposite parties may kindly be restrained by an ad interim injunction from dismantling/demolishing entire/any part of the building and structures established in the Schedule "A" land for ends of justice.
16. That the plaintiffs-petitioners being older persons have appointed the plaintiff No. 7 for swearing affidavit or appearing before the commissioner or doing the needful by executing a power of attorney in this regard.

Wherefore, this Learned Court would graciously be pleased to pass an order of ad-interim injunction restraining the defendants-opposite parties from dismantling/demolishing the entire/any part of the building and structures established in the Schedule "A" below of the plaintiffs-petitioners and from disturbing their peaceful possession thereon for ends of justice, and/or grant such other or further relief or reliefs which as to your honour may seem fit and proper under law and equity.

And for which act of kindness the plaintiffs-petitioners as in duty bound shall ever pray.

Description of the Property**Schedule “A”**

District- Dhaka, Police Station- Hazaribagh, Sub-Registry Office- Mohammadpur, Towzi- Dhaka Collectorate, Mouza- Shibpur, J.L. Nos. : C.S. 254, S.A. 78, R.S. and Dhaka City Jarip 9, Khatian Nos. C.S. Khatian Nos. 84 and 266, S.A. Khatian Nos. 427 and 428, R.S. Khatian No. 1263, Dhaka City Jarip Khatian No. 823, Namjari- 5466, 5467, 5465, 5468, 5464 and 5463, Namjari Jote Nos. 130/5, 131/5, 129/5, 132/5, 128/5 and 127/5, Plot Nos. C.S. 186 and 186/706, S.A. 511 and 512, R.S. 1248 and Dhaka City Jarip 3383, Holding No. 35, Mitali Road, Dhaka land measuring 0724 (Seven Hundred and Twenty Four) ajuthansha and 09 storied building thereon.

Butted and bounded by—

In the East : Land of late Syed Ali Imam, Holding No. 34, Mitali Road.

In the West : Land of late Ershad Hossain, Holding No. 6, Mitali Road.

In the South : City Corporation Road.

In the North : Land of Syed Ahammad

AFFIDAVIT

I, Mahmudul Hasan Helal, Son of Abdul Hafiz and Momena Begum, Managing Director of Prantik Design and Development Limited, represented by its, of Haque Chamber, Level- 5, 89/2, West Pathapath, Dhaka-1215, age about-.45 years, by faith - Muslim, by profession- Business, by nationality- Bangladeshi do hereby solemnly affirm and say as follows:-

1. That I am the authorized person on behalf of the plaintiffs and as such acquainted with the facts and circumstances of this case and competent to swear this Affidavit.
2. That the statements made in this plaint are true to the best of my knowledge and belief and knowing truth thereof I sign this Affidavit on this the 24th day of November, 2019 at 10.030 a.m.

DEPONENT

The deponent is known to me and identified by me.

ADVOCATE

Sample

IN THE COURT OF JOINT DISTRICT JUDGE, COURT NO., DHAKA.

TITLE SUIT NO. OF 2019.

Raquiba Banu

.....**Plaintiff-Petitioner.**

–*Versus*–

Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka and others.

.....**Defendants-Opposite Parties.**

An application for injunction under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908.

Application valued at Tk. 3,00,00,000/- (Taka Three Crore) only.

The humble petition on behalf of the plaintiff-petitioner :

1. That the plaintiff-petitioner is a law abiding, peace loving and permanent citizen of Bangladesh.
2. The addresses given above are correct address for the purpose of service of summons and notices, upon the parties.
3. That the plaintiff-petitioner is the owner and possessor of the land as described in the schedule below. Her name was duly recorded in all the relevant records including latest Dhaka City Jarip and mutation khatian. There is no dispute from any corner regarding her title and possession in the scheduled land.
4. That the Government acquired land from Mouza- Jowar Shahara, Thana-Cantonment, District- Dhaka earlier. In the said Mouza, the land of the plaintiff-petitioner as described in the schedule is situated. During that acquisition, land measuring .42 decimals Nal from the total land measuring 79.20 decimals of the plaintiff was acquired vide L.A. Case No. 09/2006-2007, against which the plaintiff was given compensation in the year 2011. The concerned authorities demarcated the schedule land finally in the said L.A. Case. Therefore, now there is neither any scope for the defendants-opposite parties to go beyond the said demarcation nor to interfere into the schedule land of the plaintiff.
5. That after acquisition of said 42 decimals there left 37.20 decimals for the plaintiff out of her total 79.20 decimals of schedule land. The Government acquired the land for constructing Mirpur-Kalshi-E.C.B. Chatter 150 feet Road for the public at large. But at time of carrying out the said construction work the defendant Nos. 3-5 very illegally and

arbitrarily on 24.12.2018 encroached into the land of the plaintiff going beyond the demarcation and determination of land as marked by the defendant No. 5 earlier at the time of said acquisition vide L.A. Case No. 09/2006-2007. By this way the defendant Nos. 3-5 illegally entered 10 feet length, 220 feet width, in total 2,200 feet into the land of the plaintiff from the North side, which is clearly evident from the Map.

6. That regarding the violation and illegal encroachment/construction into the land of the plaintiff, the plaintiff and her son requested the defendants for several times. But the defendants paid no heed to any of the requests of the plaintiffs and her son.
7. That on 30.05.2018 the defendant No. 5 informed the plaintiff and others about demarcation of land. Thereafter, they went to the said land and verbally fixed the date of survey and demarcation of land on 5.06.2018 but no such survey or demarcation was conducted by them. Against the same, the son of the plaintiff again on 6.06.2018 requested the defendants Nos. 3-5 to demarcate the land. In response, the defendant No. 5 informed vide letter dated 7.06.2018 that due to absence of the defendant No. 6 they could not conduct survey and demarcate the land.
8. Thereafter, the son of the plaintiff requested the defendant No. 6 to conduct survey and demarcate the land as per the original acquisition vide letter dated 19.06.2018. Before the said letter met with any response from the office of the defendant No. 6 in this regard, the defendant Nos. 3-5 illegally entered into the land of the plaintiff, broke the boundary wall, destroyed the structures thereof, dug soil and started their works. Being aggrieved thereof, the plaintiff lodged a GD on 25.12.2018 having entry No. 1103 with the Dhaka Cantonment Police Station, Dhaka.
9. That on 26.12.2018 the office of the defendant Nos. 6-7 informed the office of the defendant Nos. 3-5 about the carrying out of said works by the defendant Nos. 3-5 before settling the dispute regarding demarcation in the following manner—
 “উপর্যুক্ত বিষয়ে জনাব রাজী মোঃ ফখরুল, মাননীয় সংসদ সদস্য, কুমিল্লা-৪ এর আবেদনের প্রেক্ষিতে জানানো যাচ্ছে যে, ০৯/২০০৬-২০০৭ নং এল এ কেসের মাধ্যমে অধিগৃহীত জোয়ার সাহার মৌজার, আর এস-৭০১ নং দাগের অধিগৃহীত ভূমির সীমার সংক্রান্ত জটিলতা নিরসনের লক্ষ্যে সূত্রোক্ত স্মারকে একটি কমিটি গঠন করা হয়। পরবর্তীতে বেগম রাকিবা বানু (মাননীয় সংসদ সদস্য, কুমিল্লা-৪ এর মাতা) ২৬/১২/২০১৮ খ্রিঃ তারিখের আবেদনে জানান যে, সীমানা পরিমাপের বিষয়টি নিরূপন হওয়ার পূর্বেই ১৭ ইসিবি কর্তৃক আবেদনকারীর সীমানা প্রাচীর ভেঙ্গে রাস্তা প্রশস্ত করণের জন্য গর্ত করা হচ্ছে।
 ০২। উল্লেখ্য যে, একাদশ জাতীয় সংসদ নির্বাচন সমাগত প্রায়। এমতাবস্থায়, গঠিত কমিটির পরিমাপ/প্রতিবেদন প্রাপ্তির পর এ বিষয়ে ব্যবস্থা গ্রহণের জন্য ও সুষ্ঠু আইন শৃঙ্খলা পরিস্থিতির স্বার্থে বর্ণিত রাস্তার সম্প্রসারণ কার্যক্রম স্থগিত রাখার জন্য নির্দেশক্রমে অনুরোধ করা হল।”
10. That after said encroachment into the schedule land of the plaintiff on 24.12.2018, the plaintiff submitted several representations before the concerned authorities. By dint of that position, the defendants are now not coming up for entering/encroaching into the schedule land of the plaintiff, and the construction work of the defendants thereon is stopped now. Under the circumstances, though the plaintiff is in absolute possession in the suit land, it is highly apprehended by the plaintiff that the defendants may come at any time for evicting the plaintiff from the schedule land and carrying out their construction work thereon. This

illegal and arbitrary action of the defendants does not only cloud the possession of the plaintiff but also cloud her title in the suit land. Moreover, on 1.04.2019 some of the officers of the defendants again came into the land of the plaintiff and warned that if the plaintiff would not make the schedule land vacant by next fifteen days amicably, then the plaintiff will be evicted forcefully without giving any notice to that effect.

11. That since the plaintiff is the absolute owner and possessor of the suit land, her name was duly recorded in the relevant records having proper namjari and jomabagh case and there is no dispute from any corner regarding her title in respect of schedule land; therefore the plaintiff is entitled to a declaration of title in the suit land from this court.
12. That the said action of the defendants Nos. 3-5 encroaching into the land of the plaintiff by going beyond the demarcation and determination of land is violation of legal rights of the plaintiff. Moreover, because of invasion by the defendants, the plaintiff will not get adequate pecuniary compensation as because the encroached portion of land has not been acquired ever by the government. Hence, the defendants should be restrained by an order of permanent injunction from further construction on/encroaching into the said schedule land until the demarcation and determination of the said schedule land is completed. For that reason, the defendants are required to be restrained by an order of permanent as well as temporary injunction.
13. That it is submitted that the prime facie case absolutely goes in favor the plaintiff since she is the legal owner and possessor of the suit land. Sudden encroachment into the land of the plaintiff and breaking boundary wall, structures and digging soil thereof without giving proper opportunity to the plaintiff and also without demarcating the actual area is a clear violation of earlier demarcation made under L.A. Case No. 09/2006-2007. Moreover, the illegal, arbitrary, malafide and forceful encroachment into the schedule land of the plaintiff by the defendants is a clear violation and degradation of the plaintiff's fundamental right to own and enjoy her property without being disturbed by anyone in accordance with law. For that reason, the defendants should be restrained by an order of temporary injunction from encroaching/entering into the schedule land of the plaintiff-petitioner and from disturbing her peaceful possession thereon for ends of justice.
14. That it is submitted that there is a strong arguable case in favor of the plaintiff because the defendants without conducting survey and demarcation the land as per the original acquisition very illegally and arbitrarily entered into the plaintiff's land, broke the boundary wall, destroyed the structures thereof, dug soil and started their works. As such, the defendants-opposite parties may kindly be restrained by an order of temporary injunction from encroaching/entering into the schedule land of the plaintiff-petitioner and from disturbing her peaceful possession thereon for ends of justice.
15. That it is submitted that the defendants Nos. 3-5 have violated the plaintiff's right to get protection of law and right to property as enshrined under Articles 31 and 42 of the Constitution of the People's Republic of Bangladesh. As such, the defendants-opposite parties may kindly be restrained by an order of temporary injunction from encroaching/entering into the schedule land of the plaintiff-petitioner and from disturbing her peaceful possession thereon for ends of justice.

16. That it is submitted that considering the balance of convenience and inconvenience, if the defendants are not restrained by an order of permanent injunction from entering/encroaching into the land of the petitioner in the name of widening the street, the plaintiff shall suffer severe inconvenience and irreparable loss and injury which may not be compensated in terms of money. As such, the defendants-opposite parties may kindly be restrained by an order of temporary injunction from encroaching/entering into the schedule land of the plaintiff-petitioner and from disturbing her peaceful possession thereon for ends of justice.
17. That the plaintiff being an old lady has appointed her son for swearing affidavit or appearing before the commissioner or doing the needful by executing a power of attorney in this regard.

Wherefore, this Learned Court would graciously be pleased to pass an order of temporary injunction restraining the defendants-opposite parties from entering/encroaching into the schedule land of the plaintiff-petitioner and from disturbing her peaceful possession thereon for ends of justice, and/or grant such other or further relief or reliefs which as to your honour may seem fit and proper under law and equity.

And for which act of kindness the plaintiff-petitioner as in duty bound shall ever pray.

Schedule of the Property

All that piece and parcel of the immoveable property measuring 37.20 decimals situated at Mouza- Jowar Shahara, Thana-Cantonment, District- Dhaka, CS Khatian No. 122, SA Khatian No. 439, RS Khatian No.438, City Jarip Khatian No. 12908 and CS Dag No. 597, RS Dag No. 701, City Jarip Dag No. 34338, butted and bounded by

In the East : Land of BJ Tower Bhaban.

In the West: Land of Online Group and Mr. Abdul Goni alias Goni Mia.

In the South: Land of Online Group.

In the North: Mirpur-Kalshi-ECB Chatter Road.

AFFIDAVIT

I,, son of, aged about- years, occupation – Service, by faith- Muslim, by Nationality- Bangladeshi, National ID No. do hereby solemnly affirm and say as follows :—

01. That I am the tadbikarak of the plaintiff-petitioner in this case and well-conversant with the facts of this case and competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
the said at Court premises, Dhaka on
this the day of, 2018
at A.M./P.M.

DEPONENT

The deponent is known
to me and identified by me.

Advocate

Sample

IN THE COURT OF 1st JOINT DISTRICT AND SESSION JUDGE, DHAKA
CIVIL SUIT NO. 726/2017.

Alhaj S.A.M. Mohiuddin Khan.

...Plaintiff.

—VERSUS—

JUBOK E Khatigrasrha Janakalyan Society and others.

....Defendants

Written objection on behalf of the defendant Nos. 1-3
to the application for injunction filed by the plaintiff
under section 151 of the Code of Civil Procedure.

The defendants beg to state as follows—

1. That the plaintiff filed this suit for declaration and permanent injunction against the defendants praying to continue his personal service as agent of the defendant No. 1 society by dint of agreement dated 17.12.2016 (*referred as the said 'Agreement'*). It is pertinent to mention that the said Agreement was already expired on 30.06.2017 as evident from paragraph 9 of the said agreement and as accordingly, the defendants have released the

plaintiff from providing his service vide letter dated 17.07.2017 which was duly accepted by the petitioner. For enforcing the said expired agreement and challenging the release letter, the plaintiff moved this injunction petition against the defendants, which is not maintainable in its present form and manner and the application for injunction has no merit at all; as such the same is liable to be rejected. That the plaintiff is barred by law of estoppel, waiver and acquiesces.

2. That the statements made in the application for injunction which are not specifically admitted are deemed to have been denied by these defendants.
3. That the statements made in paragraph No.1 describing that, the plaintiff has filed the suit with highest ad-valorem court fees is matter of record; hence call for no comments, and the plaintiff is under strict liability to prove the same.
4. That the statements made in paragraph No.2 describing that, the learned court has issued show cause upon defendants on 07.08.2017 is matter of record; hence call for no comments, and the remaining statements that, the notice has been served duly, the defendant no.1 is passing time and did not reply the show cause, disobeying the court's order, did not take any step till now and as accordingly, the plaintiff's invested money cannot be recovered are absolutely misconceived, false and incorrect; hence denied by the defendants. That the defendants made representation before the learned court immediately after obtaining the notice and prayed time before the learned court to reply the show cause. The Court allowed time and fixed 01.03.2018 as next date. That on that day, the defendants appeared before the Court and found that, the plaintiff on 07.02.2018 (where the date was not fixed for the suit) filed a petition for injunction under 151 of CPC. It is mentionable that, in the said petition, the plaintiff mentioned a reference indicating that, without notice to opposite party injunction may be allowed which transpires the very mala fide intention and practice of the plaintiff. The said reference is as follows: **"Ad-interim Injunction : Without notice to OP is without jurisdiction, held in 16 DLR-43, over ruled, held in 18 DLR that notice to OP before granting injunction not indispensable in all circumstances"**. That in the fixed dates the plaintiff remain absent regularly submitting Hajira only. These attending facts transpire very mala fide objectives of the plaintiff. And the aforesaid legal contentions are also misconceived, mala fide, mis-interpreted and the same are hopelessly barred by law. It is not only the legitimate expectation of the defendants under the principle of natural justice but also the legal right that, the defendants must be given opportunity of being heard before passing any order concerning his/their right and interest. That the court being social auditor, centre of gravity of justice to ensure social justice must diagnose the facts and laws of the land. As accordingly, the application under section 151 is liable to be rejected for ends of justice.
5. That there is no legal substance of the said application under section 151 of the plaintiff as because the plaintiff has no legal standi to file the instant suit and application. Moreover, the plaint along with the application does not disclose any cause of action. Therefore, the suit is hopelessly barred by law for not having any cause of action or disclosing any cogent ground of filing the suit. That it is an well established legal principle that, the cause of action of the Plaintiff is a vital consideration regarding temporary injunction. Cause of

Action means a primary right of the Plaintiff which is actually violated by the Defendant (**Black's Law Dictionary, Ninth Edition, P.251**). That the foremost element of Cause of Action i.e. primary right of the Plaintiff and actual violation by the Defendants are absolutely absent in the petition. So, the Petitioner has no *Cause of Action* and *Locus Standi* to file the instant suit as well as the application for temporary injunction and as such the same is liable to be rejected for ends of justice.

6. That the balance of inconvenience rule has no place where the applicant's right is doubtful (**49 DLR 260**). The petitioner right is absolutely doubtful which is evident easily from the submitted documents and as accordingly the petition is liable to be rejected. That the petitioner has failed to prove cause of action, prima facie, balance of convenience and inconvenience, irreparable loss and injury and as accordingly the petition is liable to be rejected.
7. The right to obtain an injunction is ancillary to the right to file a suit which can be obtained on showing of Prima facie case, irreparable loss and balance of inconvenience (**Deputy Secretary, Ministry of Commerce V. Nizamudin Haider, 37 DLR 102**). The Plaintiff has failed to fulfill these required documents and as such the petition is liable to be rejected. The applicant of Temporary Injunction must show (a) a prima facie case in support of the right claimed; (b) an actual violation of the right (**11 DLR, 470**) which are absent fully and finally in the petition of the Plaintiff. The applicant has to show that a fair and arguable case exists in his favor (**28 DLR, 414**) which is also absent in the said petition.
8. That the cardinal principle of law is that, the petitioner must come with clean hand. That the facts and the documents clearly transpire that, the petitioner is dishonest litigant having no clean hand and as accordingly, the petition is liable to be set aside. Our Apex Court's observation in Khaleda Rahman & another vs. Integrated Services Limited and others, 53 DLR 161 is pertinent here— *"Granting or refusing injunction is an equitable relief. It should be used in aid of equity and fair justice. It is well settled that, one who comes for equitable relief must come with clean hands."*
"the law enjoins that, the person seeking injunction must come with clean hands. But here in the present case the petitioner came before the learned court with unclean and dirty hands and as such they should not be favoured with an injunction. That the conduct of the petitioner is unethical, which is on the very face mala fide and as accordingly, he should not be allowed to reap the harvest of unethical activities."
9. The balance of inconvenience rule has no place where the applicant's right is doubtful or where he can be compensated in money terms. The Apex Court in Sarhind Garments Ltd. v Glory Truth Industries Ltd., 49 DLR 260) held that- *"The balance of convenience rule has no place where the applicant's right is doubtful, or where he can be compensated by damages in money, or where the wrong might have been redressed if the applicant was sufficiently vigilant."*
10. That as per the expired agreement in question, the petitioner having no standi cannot pray injunction to continue his service and as accordingly the petition is liable to be rejected. That the relation being contractual the defendants have legal right to release the plaintiff

and as accordingly the petition is liable to be rejected. The Apex Court rightly observed in *Azizur Rahman v. The Burmah Oil Co. (Pakistan Trading Ltd, 13 DLR 458* that—

“A contract of personal service with a private firm-suit for reinstatement on dismissal does not lie- suit for damage is the proper course. A private firm must have a free choice in the matter of appointment and discharge of its employees. A court cannot foist upon an unwilling private firm an employee whom it has thought fit to get rid of, and to that end, rightly or wrongly, whom it has discharged or whom, for one reason or another, the firm is unwilling to accept. Should an employee, however, feel aggrieved and consider that he has been wrongfully and illegally discharged, all that he can seek from a court is damage and not his reinstatement, which the Court is not competent at all to order. Although an employee may establish that he has been wrongly dismissed, still he is not entitled to the remedy of an injunction or of specific performance of in as much as a contract involving his personal service cannot be specifically enforced in view of sec 21(b) of the Specific Relief Act.”

And in *Eastern Federal Union Insurance v ATM Hoq, 23 DLR 79* the observation is as follows—

“Even though the applicant may have an arguable case, the employer having the inherent right to dispense with the service of the employee no injunction can issue”.

11. That the petitioner as being a personal service provider under revocable contract cannot invoke injunction and as accordingly the petition is liable to be rejected. The Court observed in *M/s. Gordon Woodroffe v. Gopinath, AIR 1978 Mad 374*—

“That no injunction can be issued to restrain breach of contract which cannot be specifically enforced. Thus a contract of personal service not being specifically enforceable, no injunction can issue to restrain the employer from terminating the service of the employee.”

The Court also observed in *Bangladesh v. Ferozur Rahman, 45 DLR 762* that—

“That no injunction can issue in respect of revocable licence or a contract of agency.”

12. That though the petitioner has no legal claim at all nevertheless the claim made if any is able to be compensated through damages and as accordingly, the petition is liable to be rejected. It is observed in *M/s. Wanger Biro v. Roushan Ara, 25 DLR 293*—

“That where breach of contract or injury can be compensated by money, injunction will not be granted. Injunction is a form of equitable relief and it is the discretion of the Court whether it should be granted or not. If the loss arising out of such a breach of contract or injury can be properly and adequately compensated by payment of money, no injunction would be granted. Here injunction would not lie only to restrain breach of contract or the commission of an injury.”

13. That the defendants being a voluntary association it holds right to appoint any person and also release the same where injunction should not be allowed unnecessarily honouring the cardinal principles of law observed in *O'Reilly v. Gittens, AIR 1949 PC 313*—

“That voluntary societies, association, clubs or professional bodies have their own constitution or rules for hearing and determining the rights and duties of individual members by the bodies appointed or constituted under those constitutions or rules and they exercise jurisdiction analogous to that of inferior courts of justice. The jurisdiction of civil court over these domestic tribunals is of limited nature.”

The reference of *Shahzada Muhd. Umar Beg v. Sultan Mahmood Khan, Excise and Taxation Sub-Inspector and others*, 22 D.L.R. (S.C.) 41 is also relevant—

“That grant of injunction will really tell upon the internal management of the defendants and as such the petitioner is not entitled to the injunction.”

14. That the agreement in question expired on 30.06.2017 and as accordingly the petitioner has no locus standi to file this suit/petition, hence the same is liable to be rejected. The reference of *Md. Lutfor Rahman Molla and another v. M. Saiful Alam*, 2015 BLD (HC) 35 is as follows—

“The plaintiff’s tenancy agreement with the defendant having expired, they have no locus standi and cause of action to bring the suit for permanent injunction against the land lord and as such the plaint is liable to be rejected.”

In 6 BLC 467 it is observed that—

“As the plaintiff was given lease of the suit property for a shorter period as of a licensee and the lease period had already expired and, as such, the plaintiff had no subsisting legal right to pray for injunction. Order XXXIX rules 1 and 2 of the Code didn’t empower the Court to grant permanent injunction when the plaintiff has no subsisting interest in the property in dispute.”

In addition, it is already stated that the repugnant contract is both voidable under section 19 (A) and void under section 23 and 24 of the Contract Act, 1872. Thus the application for injunction by the plaintiff is liable to be set aside. Thus, there is no such right existing in favor of the plaintiff by dint of which he can institute this suit and claim injunction. In the cases namely 47 DLR 173, 12 BLC (AD) 07, 56 DLR (AD) 08, 43 DLR (AD) 215, 52 DLR 390, 56 DLR (AD) 22 it was decided that a suit having no *locus standi* should be liable to be dismissed.

15. That the prayers of the petitioner are not tenable in law, as the relationship is master – servant and hence petition of injunction is not maintainable. In *Rupali Bank Ltd. v Md. Arah Ali and others*, 7 BLC(AD) 1, wherein their Lordships held that:

“...the relationship between the employer Bank and the plaintiff- employee became that of a master and servant from that date, but if we accept the case of the plaintiff that the Rupali Bank Ltd is bound by that clause of the vendors agreement in case of their employees on that date, even the plaintiff employee is not entitled to get a decree for mandatory injunction as aforesaid in view of the legal bar in clause (c) correct (f) of section 56 of the Specific Relief Act which runs as follows- 56. An injunction cannot be granted- ... (f) to prevent the breach of a contract the performance of which would not be specifically enforced...”

In Padma Oil Company Ltd. v S.M. Nurul Islam and others 56 DLR (2004) 505 and 5 BLC (AD) 1

“...breaches of contract for personal services are not restrained by Courts ordering the employer to retain the employee in his service. Speaking generally, it is the right of the employer to discharge his employee. Courts cannot compel a person, against his will, to employ or serve another, notwithstanding the contract of service. A mandatory injunction cannot be granted for such purpose”.

16. That it is admitted that, the petitioner is out of his service consequent to the expiry of the agreement and the withdrawal letter of his dismissal from his service and therefore, the decree of permanent injunction cannot be an effective relief. Under the circumstances, the petitioner may seek remedy for damages not permanent injunction. That in para 16 of Padma Oil Company Ltd. v S.M. Nurul Islam and others 56 DLR (2004) 505 court also held that—

“the plaintiff being out of his office also cannot get an order of permanent injunction restraining the defendants to disturb him in his office”.

17. That the contract in question is a contract for personal services where the petitioner agreed to provide his personal services to the defendants. That as the subject matter of the contract is personal service it cannot be specifically enforced as per section 21 of Specific Relief Act, 1877.
18. That if the injunction is allowed the petitioner will get unfair advantage over the defendants and it shall also create hardship on them but the petitioner shall not suffer any loss and injury. As accordingly, the injunction petition should be rejected for ends of justice. That Section 22 of Specific Relief Act, 1877 is pertinent to mention here—

22. “...The following are cases in which the Court may properly exercise discretion not to decree specific performance :—

- I. *Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.*
- II. *Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff”.*

19. That the petitioner has no legal character or right and as accordingly no issue of denial of such right from the part of defendants. That the petitioner is a dishonest litigant of misrepresentation and concealment of material facts and as accordingly he is not entitled to injunction. That the petitioner presented a document claiming it as General Power of Attorney which is no power of attorney at all as per Section 2(7) of Power of Attorney Act, 2012 as follows—

২। বিষয় বা প্রসংগের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে,—

(৭) “সাধারণ পাওয়ার অব অ্যাটর্নি” অর্থ দফা (৪) এ উল্লিখিত বিষয়ে সম্পাদিত অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নি ব্যতীত অন্য কোন বিষয়ে সম্পাদিত পাওয়ার অব অ্যাটর্নি;

And Schedule 1 serial no.48 of Stamp Act, 1899 states that, General Power of Attorney shall be executed in stamp of Tk. 1000/-. So, the claimed power of attorney has no legal basis and as accordingly, the petition is liable to be rejected outright.

20. That the suit is barred by section 19(a), 23 & 24 the Contract Act, 1872. The relief claimed by the plaintiff is based on the contract signed between the plaintiff and the defendants dated on 18.12.2016. The basis of the plaintiff's claim is itself a voidable contract at the option of the defendants under section 19(A) of the Contract Act, 1872 as the contract was entered into by the defendants under undue influence caused by the plaintiff. A careful and cautious examination of the facts and circumstances of the case and the language of the contract clearly reflects that, all the elements necessary to constitute 'Undue Influence' as defined in section 16 is prevalent in the contract. As such, the suit is liable to be dismissed and the application for injunction is liable to be rejected. It is pertinent to mention here that, the plaintiff/petitioner mentioned him as a person who has a deep involvement with the high officials of the government which is clearly mentioned in the 2nd Para of the agreement as follows—

“দ্বিতীয় পক্ষ একজন সাংবাদিক ও প্রশাসনের সকল পর্যায়ে উঠাবসা ও পরিচয় থাকায় (2nd paragraph, first line)

21. The suit is liable to be dismissed because the intention of the plaintiff was **fraudulent and malafide** which made the object unlawful. That the plaintiff by using his position of 'Active confidence' induced the defendants that, if he failed to perform his duty, his wife Mrs. Jesmin Ara Khanom or any other person nominated by the plaintiff will recover the money and will receive the remuneration on his behalf. It is mentioned in Para- 11 of the said agreement. The language goes as- “তবে ভবিষ্যতে যদি ২য় পক্ষ কোন রূপ বিপদে পড়েন তবে ২য় পক্ষের অবর্তমানে তার স্ত্রী মিসেস জেসমিন আরা খানম, উক্ত প্রতিষ্ঠানের দায়িত্ব গ্রহণ করবেন। অথবা ২য় পক্ষ কর্তৃক মনোনীত কোন ব্যক্তি প্রতিষ্ঠানের দায়িত্ব ভার গ্রহণ করবেন এবং সকল প্রতিষ্ঠানের সকল কার্যক্রম পরিচালনা করবেন ও সকল ফলাফল ভোগ করবেন। এতে ১ম পক্ষ কোন ওজর আপত্তি করতে পারবেন না” (Para- 11 of the said agreement). This inclusion clearly reflects the malafide intention on behalf of the plaintiff. Thus, the intention of the plaintiff was **Fraudulent** which made the object unlawful as the intention of the plaintiff was only to derive a huge amount of money using his power, position and also the vulnerability of the defendants. As per Sections 23 and 24 of Contract Act, 1872 this kind of contract is completely void. Thus, the application for injunction under section 151 is liable to be set aside.

WHEREFORE, it is prayed that your honor would graciously be pleased to reject the application for temporary injunction under section 151 for ends of justice and/or pass such other order(s) granting further relief(s) as your honour deem fit and proper.

And for this act of kindness, the plaintiff as in duty bound shall ever pray.

AFFIDAVIT

I, Mr. Mahmud Hosen Mukul, Son of Md. Abdul Hai Miah, Secretary, JUBOK E Khatigrasarha Janakalyan Society, of 53/1, Purana Paltan Line, Palatan, Dhaka Aged- 52 years, by faith Muslim, by occupation- service, by nationality Bangladeshi, do hereby solemnly affirm and say as follows:—

1. That I am the defendant of this suit and as such acquainted with the facts and circumstances of this petition and competent to swear this Affidavit.
2. That the statements made in this written objection are true to the best of my knowledge and belief and knowing truth thereof I sign this Affidavit on this the day of March, 2018 at a.m.

DEPONENT

The Deponent is known to me and identified by me.

ADVOCATE

Sample

**IN THE COURT OF JOINT DISTRICT JUDGE,
3rd COURT, DHAKA.**

MONEY SUIT NO. 01 OF 2013

Civil Aviation Authority of Bangladesh.

... **Plaintiffs**

—Versus—

GMG Airlines Limited and others.

....**Defendants-Applicants**

**An application under Order VII Rule 11 (b) and (d)
for rejection of plaint.**

The humble petition on behalf of the aforesaid defendant no. 1 as follows—

1. That the plaintiff filed this Money Suit for recovery of money against the defendants. This suit is not maintainable in its present form and manner; as such the plaint is liable to be rejected and the suit is liable to be dismissed.
2. That the suit is barred by law, principle of waiver and acquiescence, hence the same is liable to be dismissed.
3. That the plaint does not disclose any cause of action and the same is also barred by law; as such the plaint is liable to be rejected under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure, 1908.
4. That the claims which are not specifically admitted here are deemed to have been denied by this deponent.
5. That the fact alleged by the plaintiffs in this suit is that the defendant no. 1 used the premise, runway and other facilities under the plaintiff, but the defendant no. 1 did not repay the rent against the said facilities. All these allegations made in the plain by the plaintiff against the defendants are not true; hence denied by this deponent.
6. That the plaintiff Civil Aviation Authority of Bangladesh (CAAB) is a government organization established under the Statute; as such any of its demand/claim to its service recipients (which is the defendant no. 1 in the present case) shall be treated as 'pubic demand' like other government's demand. And, for recovery of the 'public demand' the proceeding under the Public Demands Recovery Act, 1913 shall prevail. Therefore, for recovery of the 'public demand' i.e. claims of the plaintiff, it should file certificate case under the Public Demands Recovery Act, and as such the simple money suit is not maintainable in the eye of law. Hence, the plaintiff cannot file suit for recovery of money against the defendant company; hence the plaint is liable to be rejected for being barred by law under Order 7 Rule 11 (b) and (d) of the Code of Civil Procedure, 1908 and suit is liable to be dismissed for ends of justice.
7. That it is a well settled principle of law that when any Statute provides specific provision for recovery of the claim, the claimant must avail/follow that specific procedure. In the present case, there is specific provision for the Government organization/authority for recovery of their demand/claim. The plaintiff being a Government organization/authority cannot go beyond the prescribed provision of law. As such, the plaintiff cannot file suit for recovery of money against the defendant company; hence the plaint is liable to be rejected for being barred by law under Order 7 Rule 11 (b) and (d) of the Code of Civil Procedure, 1908 and suit is liable to be dismissed for ends of justice.
8. That some other persons (showing themselves as claimants) filed Company Matter No. 201 of 2013, 92 of 2013 and 164 of 2013 against the defendant no. 1 company for winding up of the same. All those cases are now pending before the Hon'ble High Court Division. The plaintiff also added as a party in those winding up cases. Since the winding up cases are pending before the Hon'ble High Court Division and the plaintiff is a party to those cases, therefore this suit for recovery of money is not maintainable. It is also because winding up

case is the last recourse in the eye of law whereupon all claims are to be settled finally amongst the parties. As such, the plaintiff cannot file suit for recovery of money against the defendant company; hence the plaint is liable to be rejected for being barred by law under Order 7 Rule 11 (b) and (d) of the Code of Civil Procedure, 1908 and suit is liable to be dismissed for ends of justice.

9. That it is submitted that the defendant no. 1 (popularly known as GMG Airlines) is the first private airlines company in our country. It is a public limited company incorporated under the laws of Bangladesh. It operated airlines business with high reputation in domestic and international market. Presently, the business of the defendant no. 1 is under process of complete restructure by suspending its flight operation temporarily. The defendant no. 1 suffered huge loss and damage to its business due to the non-cooperation and sudden closure of the premises used by the plaintiff. The plaintiff being a contributor to the loss and damage of the business of the defendant no. 1 cannot file suit for recovery of money. As such, the plaintiff cannot file suit for recovery of money against the defendant company; hence the plaint is liable to be rejected for being barred by law under Order 7 Rule 11 (b) and (d) of the Code of Civil Procedure, 1908 and suit is liable to be dismissed for ends of justice.

WHEREFORE, it is prayed that your honour would graciously be pleased to reject the plaint for ends of justice and/or pass such other order(s) granting further relief(s) as your honour deem fit and proper.

And for this act of kindness, the defendants-applicants as in duty bound shall ever pray.

AFFIDAVIT

I, Md. Kalam Ullah, Son of Md. Amin Ullah and Shamsunnahar, Address: House No. 357, Road : Palash Bag, Post : Rampura, Khilgaoa – 1219, Dhaka, age about – 46 years, by profession- Manager (Finance & Accounts) by nationality- Bangladeshi, National No. 2693622446053 do hereby solemnly affirm and say as follows:—

01. That we are the tadbirkarak of the case on behalf of the defendant ns. 1 and I am acquainted with the facts and circumstances of the case and as such I am competent to swear the Affidavit.
02. That the statement of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
the said at the
premises, Dhaka on
this theth day of _____, 2018
at A.M./P.M

DEPONENT

The deponent is known to me and
identified by me.

(.....)

Advocate

Membership #

Phone:

COMMISSIONER OF AFFIDAVITS

Sample

IN THE COURT OF 1st JOINT DISTRICT JUDGE, MYMENSINGH

Other Class Suit No. 46 of 2017.

Government of People's Republic of Bangladesh,
represented by its Deputy Commissioner, Mymensingh
and others.

.....**Plaintiffs.**

-VERSUS-

Md. Yousuf Harun Romel and others.

.....**Applicants/Defendants.**

**An application under Order VII Rule 11(a), (b) &(d)
read with section 151 of the Code of Civil Procedure,
1908 for rejection of plaint.**

The humble petition on behalf of the aforesaid defendant
No. 9—

1. That the plaintiffs filed this Suit for declaration and cancellation against the defendants. This suit is not maintainable in its present form and manner; as such the plaint is liable to be rejected and the suit is liable to be dismissed for ends of justice.

2. That the suit is barred by law, principle of waiver and acquittance, hence the same is liable to be dismissed for ends of justice.
3. That the plaint does not disclose any cause of action and the same is also barred by law; as such the plaint is liable to be rejected under Order 7 Rule 11 (a), (b) and (d) of the Code of Civil Procedure, 1908
4. That the claims which are not specifically admitted here are deemed to be denied.
5. That the plaintiff filed this suit for declaration of title, for cancellation of the registered Sale deed No. 12378 dated on 26.11.1995 executed in favour of defendant No. 1- and also for declaration that the judgment and decree passed on 12.03.2012 in Artha Rin Suit No. 12 of 2008 is not binding upon them.
6. That it is stated that the instant suit is hopelessly barred by law of limitation, res-judicata, waiver and acquittance. As such, the plaint is liable to be rejected and the suit is liable to be dismissed for ends of justice.
7. That it is stated that the plaintiff filed this suit on 2.03.2017 for cancellation of a registered Sale Deed dated 26.11.1995 which is substantially barred under Articles 91, 92 and 93 of the First Schedule of Limitation Act, 1908. Since the impugned Sale Deed is registered and there were earlier suits being Title Suit Nos. 444 of 2015 and 15 of 1989 between the same parties, therefore there is no scope for the plaintiff to avoid this limitation. As such, the plaint is liable to be rejected and the suit is liable to be dismissed for ends of justice.
8. That it is stated that the plaintiff also filed this suit for cancellation of a judgment and decree dated 5.03.2012, decree signed on 11.03.2012 which is also barred by the law of limitation, and a judgment passed by an Artha Rin Adalat in Artha Rin Suit cannot be challenged in a civil suit before a civil court. This is a well settled principle of law and also established under the Artha Rin Adalat Ain, 2003. Moreover, a judgment and decree passed by a special court under a special court cannot be challenged in general civil court under general court. As such, the plaint is liable to be rejected and the suit is liable to be dismissed for ends of justice.
9. That it is stated that the present suit is miserably barred by the law of res-judicata as mandated under section 11 of the Code of Civil Procedure, 1908. The present suit barred by the earlier Title Suit No. 15 of 1989 which was fully and finally adjudicated between the plaintiffs and predecessors of the plaintiffs through competent court of law regarding the same issue and property as substantially involved in this case. As such, the plaint is liable to be rejected and the suit is liable to be dismissed for ends of justice.
10. That the instant suit is nothing but an arbitrary attempt to grab the property of the defendant No. 9 by giving birth to multiplicity of suits and also depriving the defendants of this legal right, title, possession and interest in the suit land. As such, the plaint is liable to be rejected and the suit is liable to be dismissed for ends of justice.
11. That the fact is that Sree Modhu Sudhon Kundo filed the earlier Title Suit No. 15 of 1989 in the court of 1st Assistant Judge, Mymensingh for declaration and record correction stating that, the schedule property which was originally recorded in the name of Hari

Kumar Kundo in C.S. Khatian No. 177 which is situated in Mouza- Sehra under Kotwali Thana of Mymensingh district. Later on, the said Hari Kumar Kundo died leaving behind his two sons Narayan Kundo and Modhu Sudhon Kundo who subsequently became the owner of the property and had been peacefully possessing the same. But later on, in the R.O.R Khatian No. 318, the name of Sudhangsu Kundo (which is the nick name of Modhu Sudhon Kundo) was wrongly recorded instead of Modhu Sudhon Kundo. But very surprisingly and arbitrarily, the government claimed that the owner of the suit land is the government and contested the suit as defendant. In the meantime, Sree Modhu Sudhon Kundo died leaving behind his brother's son Adhir Kumar Kundo as his only heir who was substituted as plaintiff later on. Ultimately the suit was decided in favor of the plaintiff affirming the ownership and possession of the plaintiff rejecting the arbitrary claim of the government. Being aggrieved by the said judgment and decree, the defendants then filed an Appeal No. 38 of 1996 in the court of District Judge, Mymensingh which was subsequently transferred to the court of 4th Additional District Judge, Mymensingh who also affirmed the judgment of the trial court rejecting the appeal of the defendants. Being rejected by both the court, the defendants filed a Civil Revision No. 2067 of 2001 before the High Court Division against the judgment of the learned Additional District Judge, Mymensingh. The hon'ble High Court Division also upheld the findings of the appellate court finding no substance in the revision. The defendants further moved to the Appellate Division by filing a Civil Petition No. 165 of 2015 which was also dismissed by the Appellate Division.

12. That very regretfully, the plaintiff government did not comply with the judgment and direction of the Appellate Division and tried to grab the scheduled property. Having no other option, the defendant nos. 01-08 of the instant suit filed a Title Suit No. 444 of 2015 in the court of Learned Senior Assistant Judge, Mymensingh for perpetual injunction against the plaintiff Government. The learned trial court after perusing the documents and hearing both the parties, upheld the judgment of the Title Suit No. 15 of 1989 and grant a temporary injunction against the plaintiff Government holding as follows—

“ইতোমধ্যেই যেহেতু, আলোচনা করা হয়েছে prima facie বাদী পক্ষের অনুকূলে এবং সুবিধা অসুবিধার ভারসাম্য বাদীপক্ষের অনুকূলে সুতারাং এই ক্ষেত্রে অস্থায়ী নিষেধাজ্ঞার আদেশ প্রদান করা না হলে বাদী পক্ষের অপূরণীয় ক্ষতির সম্ভাবনা বিদ্যমান। উপরন্তু দেশের সর্বোচ্চ আদালত কর্তৃক সিদ্ধান্ত হওয়ার পরও যদি উপযুক্ত পক্ষ আদেশ না পান তাহলে দেশের আইন আদালত এর উপর আপামর জনগণ এর শ্রদ্ধা কমতে থাকবে। সুতারাং বাদী পক্ষে প্রার্থনামত অস্থায়ী নিষেধাজ্ঞার আদেশ পেতে অধিকারী। সেমতে ১-৪ নংবিবেচ্য বিষয়বাদী পক্ষের অনুকূলে নিষ্পত্তি করা হইল।

অতএব, আদেশ-হয় যে,

অত্র অস্থায়ী নিষেধাজ্ঞার দরখাস্তটি বিবাদীদেও বিরুদ্ধে দোতরফা সূত্রে শুনানী ক্রমে বিনা খরচায় “মঞ্জুর”করা হইল।

13. Under the aforesaid circumstances, it appears that the instant suit is hopelessly barred by the principle of ‘Res Judicata’ under section 11 of the Code of Civil Procedure, 1908. For ready orientation, a summary is given below :

Elements of Res Judicata	Previous Suit No. 15 of 1989	Present Suit No. 46 of 2017	Remarks
1. Same parties	Modhu Sudan KundoPlaintiff Government of the People's Republic of Bangladesh represented by its District Collector and others Defendants.	Government of the People's Republic of Bangladesh represented by its District Collector and others Plaintiffs Vs. Anup Kumar Kundo (who are the predecessors of the instant defendants)	Both the parties of the Former Suit No. 15 of 1989 is present in the later suit No. 46 of 2017.
2.Litigating under the same title	Declaration of title of the scheduled property and record correction	Declaration of title, cancellation of deed and judgment & decree (The entire claim depends on the issue whether the government has any title and possession over the scheduled property)	In both the suit, the title of the same property has been in contention.
3.Competent Court	Yes, the trial court was competent to try the suit having complete jurisdiction.	Yes, the instant court is competent to try the suit having complete jurisdiction.	The courts are competent.
4.Heard and Finally Decided	The former suit has been heard and finally adjudicated of by the trial court and the same were affirmed by the Appellate Division.	The present suit is still continuing.	As the former Suit No. 15 of 1989 has been heard and finally adjudicated of, the present Suit No. 46 of 2107 is hopelessly barred by the principle of res judicata.
5.Issues are directly and substantially the same	The prime and only issue was whether the plaintiff was entitled to the title and ownership of the scheduled property	All the relief claimed by the plaintiffs is based on the issue whether the plaintiff is entitled to the title and ownership of the scheduled property.	The issues are directly and substantially the same in both the suits.
6. Same subject matter	C.S. Khatian No. 177 & R.O.R. khatian no. 318 which is situated in Mouza- Sehra under Kotwali Thana of Mymensingh district.	C.S. Khatian No. 177 & R.O.R. khatian no. 318 which is situated in Mouza- Sehra under Kotwali Thana of Mymensingh district.	Same subject matter as the description and schedule of both the properties are same.

14. Later on, the scheduled property was legally transferred to A.K.M Shamsuddin through registered deed No. 12378 dated on 26.11.1995. Since then the scheduled property was under complete possession of A.K.M Shamsuddin and his legal heirs. In addition, the scheduled property was also mutated in the name of Mr. A.K.M Shamsuddin through Mutation Khatian No. 1215. Not only that, the said A.K.M Shamsuddin has also been paying land holding tax to the Government. Later on, the said A.K.M Shamsuddin availed a loan of Tk. 4, 38, 00,000/- from defendant no. 09 (Islamic Finance and Investment Limited) by executing a deed of mortgage in favor of defendant no. 09. Subsequently, the defendant no. 09 filed a Artha Rin Suit No. 12 of 2008 in the Court of 4th Artha Rin Adalat Court, Mymensingh under which a decree was passed in favor of present defendant no. 09. Thereafter, the defendant no. 09 filed a Execution Suit No. 101 of 202 in the same Court and obtained a registered certificate no. S.C/2-2013. For recovery of the possession of the mortgaged property, the present defendant no. 09 filed another Execution Suit No. 16 of 2017 and an order delivery of possession of the mortgaged property was duly passed in favor of the present defendant no. 09. But, due to the unlawful resistance of the present plaintiffs, the order of the learned court was not being materialized. In the meantime, A.K.M Shamsuddin died leaving behind his legal heirs who are included in the instant suit as defendant nos. 01-08.
15. That the whole claim of the plaintiff is based on the claim of ownership of the schedule property given in the plaint which has already been finally adjudicated by a competent court in favour of Sree Adhir Chandra Kundo (who subsequently transfer the same in favor of A.K.M. Shamsuddin and the defendant Nos. 1-8 of the instant suit are his successors) in a former suit and equally affirmed by both the High court Division and the Appellate Division. The instant suit filed by the plaintiffs is materially barred by law under the principle of 'Res Judicata' and thus is liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.
16. That it is a well settled principle of law that 'There should be an end of every litigation'. It was decided in **Shah Jalal Nure Alam v. Salimulla** by the Hon'ble Appellate Division that—

“Once an issue has been finally decided, it cannot be re-agitated between the same parties (**10 MLR AD 90**).”

This well settled principle has been duly incorporated in both Civil and Criminal procedure code in the name of Res judicata and Double Jeopardy. Under section 11 of the Code of Civil Procedure, 1908, the jurisdiction of the civil courts to try any suit which has been heard and finally decided in a previous suit has been clearly ousted. Section 11 of the Code of Civil Procedure, 1908 is as follow s:

“11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plant, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

17. That the issues in both the aforesaid are directly and substantially the same which are very much evident from the plaint of the instant suit and plaint and judgment of the former suit. Although the relief claimed is different in both the case, but the issues involved in both the suit are same and thus completely a fit one to be hit by the principle of Res Judicata’. It was decided by the hon’ble High Court Division in **Nasim v. Safina** that—

“The subject-matter of two suits may be different object of the suits, the relief asked for and the cause of action may also be different but if the matter in issue in them be identical, then the principle of Res judicata will of course have its application (**8 BLD 493**).”

In the former suit of 15 of 2018, the following issues were framed by the learned court :

“বিচার্য বিষয়

- বাদী পক্ষের অত্র মামলা দায়েরের কোন কারণ আছে কিনা?
- নালিশী দাবী ভূমিতে বাদীর স্বত্ব স্বার্থ ও দখল আছে কিনা?
- বাদী প্রার্থী মতে ডিক্রি পাওয়ার অধিকারী কিনা?
- বাদী আর কি কি প্রতিকার পাওয়ার অধিকারী?
- বাদী অধীর কুমার মধুসূদনের স্থলবর্তী ওয়ারিশ কিনা?”

It is very much clear that through issue No. 02, the question of title and possession were addressed to be solved and the learned court decided so in favour of Sree Adhir Chandra kundo by stating that—

“উপরোক্ত আলোচনায় বিশ্লেষণে দেখা যায় যে, অধীরচন্দ্র মধুসূদন কুন্ডের স্থলবর্তী ওয়ারিশ তাহা প্রমানিত। উপরোক্ত সার্বিক আলোচনার পর্যালোচনাও বিশ্লেষণ হইতে দেখা যায় যে, নালিশী সম্পত্তির একক মালিক ও দখলকার ছিলেন মধুসূদন কুন্ড, তাহার নামের একক আর, ও, আর না হওয়ার স্বত্তে কালিমা প্রলোপিত হয় এবং তৎপ্রেক্ষিতে অত্র মামলা আনয়ন কারণ উপজাত হয় এবং মধুসূদন কুন্ডের স্থলবর্তী ওয়ারিশ হিসাবে নালিশী ভূমিতে বাদী অধীর চন্দ্র কুন্ড ভোগ দখলে থাকায় স্বত্ব অর্জিত হইয়েছে এবং বাদী অত্র মামলায় একক স্বত্ব থাকা মর্মে ঘোষণা পাইতে পাও এবং ইহাই সিদ্ধান্তিত হইল।

উপরোক্তরূপ আলোচনার প্রেক্ষিতে বিচার্য বিষয় সমূহ হাঁ সুচকভাবে বাদীপক্ষে নিষ্পত্তিকৃত হইল।
প্রদত্ত কোর্ট ফি সঠিক। অতএব,

আদেশ

অএ মামলাটি দু তরফা সুত্রে বিনা খরচে ডিক্রি প্রদান করা হইল। নালিশী ভূমিতে বাদী স্বত্ববান দখলকার থাকা মর্মে ঘোষণা প্রদান করা হইল।”

Undoubtedly the issue was correctly addressed by the learned court for once and for all. The present plaintiff then filed an Appeal No. 38 of 1996 in the court of District Judge which was subsequently transferred to the court of 4th Additional District Judge, Mymensingh who also affirmed the judgment of the trial court rejecting the appeal of the instant plaintiff. The judgment was as follows :

“এই আপীল শুনানীর জন্য ২০০০ সালের মে মাসের ৩১ তারিখে আপীলকারীর পণ্ডে এডভোকেট জনাব আশরাফ হোসেন এডভোকেট এবং এডভোকেট জনাব মোফাজ্জল হোসেন এডভোকেট উত্তরাধিকারী (রেসপনডেন্ট) এর পক্ষে এর সমক্ষে আদেশ হইল যে, অত্র আপীল মামলাটি রেসপনডেন্টের বিরুদ্ধে দুতরফা সুত্রে বিনা খরচায় না মঞ্জুর হইল। বিজ্ঞ নিম্ন আদালতে প্রদত্ত ইং ৪/১০/১৯৯৫ তারিখের রায়ও তথ্যিক্রি এতদ্বারা বহাল রাখা হইল।”

Being rejected by both the court, the present plaintiff filed a Civil Revision No. 2067 of 2001 before the High Court Division against the judgment of the learned Additional District Judge. The hon'ble High Court Division also upheld the findings of the appellate court finding no substance in the civil revision by stating that—

“In affirming the decree of the trial court, the appellate court therefore did not commit any error of law calling for any interference by this Division. The explanation for the delay in making this application is also not satisfactory. So, the submissions of the learned Advocate have no substance. The impugned judgment and decree affirming those of the trial court are hereby upheld.”

The instant plaintiff also moved to the Appellate Division by filing a Civil Review Petition No. 165 of 2015 which was also dismissed by the Appellate Division by stating that—

“The petition is out of time by 4579 but the explanation offered seeking condonation of delay is not at all satisfactory.

Accordingly, the Civil Review Petition is dismissed as barred by limitation.”

That the present plaintiff with malafide intention filed the instant suit just for curtailing the fundamental right of the defendant No. 9 as to the ownership of the scheduled property which has already been finally determined in favor of the instant defendant nos. 1-8. Thus the suit is barred by the principle of res judicata and thus liable to be set aside under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

18. That a simple and plain reading of the plaint clearly dispose that the whole claim of the instant plaintiff solely depends on the single issue whether the plaintiff has the ownership and title of the schedule property? The claims made by the plaintiff in the plaint are as below:

“০৬। সমতেবাদীপক্ষেরপ্রার্থনা এই যে,

(ক) তফসিলে বর্ণিত নালিশী সম্পত্তিতে বাদী পক্ষে স্বত্ব,স্বার্থ ও দখল থাকা অবধারণে এবং তফসিলে বর্ণিত নালিশী সম্পত্তি সম্পর্কিত বিষয়ে ১-৮ নংবিবাদীগণের পূর্ববর্তীর নামীয় সদও সাব রেজিস্ট্রার

অফিসে বিগত ২৬/১১/১৯৯৫ খ্রিঃ তারিখে রেজিস্ট্রিকৃত ১২৩৭৮নং সাফকবালা দলিল সম্পূর্ণ বেআইনী, যোগসাজসিক, তথ্যকী, ফলবলহীন, ষড়যন্ত্র মূলক গণ্যে এবং উহা বাদীপক্ষের উপর কদাপি বাধ্যকর নহে মম্যে ঘোষণামূলক ডিক্রীসহ উক্ত বেআইনী দলিলের অনুবলে ঢাকার বিজ্ঞ অর্থস্বর্ণ ৪র্থ আদালতে ১২/২০০৮ সন অর্থস্বর্ণ মোকদ্দমায় বিগত ১২/০৩/২০১২ খ্রিঃ তারিখে প্রচারিত রায় বাদীগণ প্রতি বাধ্যকর নয় মর্মে ঘোষণামূলক ডিক্রী দিতে :এবং

- (খ) আদালত কর্তৃক বাদীপক্ষের অনুকূলে প্রতিদ্বন্দ্বী বিবাদী পক্ষের প্রতিকূলে ডিক্রী দিতে;এবং
- (গ) আইন ও ইকুইটি মতে বাদীপক্ষ আর যে যে প্রতিকার পাইতে আদালত কর্তৃক হকদার বিবেচিত হয়েন তাহাও ডিক্রী দিতে আদালতের মর্জি হয়।”

None of the above claims can be satisfied without deciding the title of the schedule property which has already been decided in the former suit in favour of Adhir Chandra kundo (who subsequently transfer the same in favor of A.K.M. Shamsuddin and the defendant Nos. 1-8 of the instant suit are his successors). Consequently, the suit is barred by the principle of res judicata and thus liable to be set aside under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

19. That parties of both the Suits No.15 of 1989 and 46 of 2017 are same in this particular instance and consequently the later suit no. 46 of 2017 are barred by the principle of ‘res judicata’ and hence liable to be set aside under Order VII Rule 11(d) of the Code of Civil Procedure, 1908. To constitute the elements of principle of ‘res judicata’, all the parties of the former suit has to be present in the later suit. It is very much conspicuous from the plaint of both the suits that all the parties of the Former Suit No. 15 of 1989 are present in the later Suit No. 46 of 2017. The plaintiff of the former suit has been included as defendant No. 10 in the later suit (As Adhir Chandra kundo has already died, his legal heir Anup Kumar Kundo) and the defendants of the former suit has been included as plaintiffs’ in the present suit. It was decided by the hon’ble High Court Division in **GanjurBewa vRahim UddinBepari** that—

“All the parties in both the suits need not be identical but it is necessary that the parties in the former suit are also parties in the latter suit (18 DLR 494).”

Under the light of the above judgment of the High Court Division, the instant suit is a completely fit one to be hit by the principle of ‘res judicata’ as all the parties of the previous suit is present in the latter suit (Suit No. 46 of 2017) and thus liable to be set aside under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

20. That the former court which decided and adjudicated the former suit and settled all the issues of the former suit must be competent to try the former suit and adjudicate the matter in dispute. In the present instance, the former suit which was instituted in the court of Sub-Judge, Mymensingh who has the full jurisdiction to try the suit as the suit value was 65, 000/- Tk. And once a suit is finally adjudicated and decided by a competent court, such decision became conclusive and cannot be reopened in any subsequent suit. Thus, the instant suit cannot be reopened in the present court as it is barred by the principle of ‘res judicata’ and liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

21. That the former suit was finally decided and adjudicated on merit by the trial court as well as the appellate courts in favour of the predecessor of the present defendant no. 10. The former Suit No. 15 of 1989 was also finally and conclusively decided even by the Appellate Division of the Supreme Court in Civil Petition No. 165 of 2015 which is the highest court under the Constitution of Bangladesh and thus the issues settled in the former suit has gone beyond the jurisdiction to try the same of any court situated anywhere in Bangladesh. It was decided in **Ran Govinda v. Bhaktabala** that—

“When the decision was given by the trial court on merits and the appeals are dismissed on some preliminary ground, like limitation or default in printing the decision operates as ‘res judicata’ as it has the effect of confirming the decision of the trial court and it amounts to the appeal being heard and finally decided (**AIR 1971 SC 664**).”

Thus, there lies only and only one treatment of the instant suit and that is to reject the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

22. That the instant suit is not maintainable in the eye of law as it is very conspicuous on a simple reading of the plaint that the suit is completely fit one to be hit by the principle of ‘res judicata’ and thus the plaint is liable to rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908. It was decided by the Hon’ble Appellate Division (whose decision is final and conclusive regarding any dispute in question) in **Sirajuddowla Vs. Bangladesh** that—

“Where it appears from a reading of the plaint to be barred by law, the plaint has to be rejected (**6 BLC AD**).”

23. That the said suit land has been under the possession and ownership of the present defendant nos. 1-8 and their predecessors which is also corroborated by different record of rights and such ownership and position has also been recognized and determined in favor of them in the former case of 15 of 1989. Thus a meaningful reading of the plaint does not disclose a clear right to sue for the absence of which no cause of action arises and as a result, the plaint is liable to be rejected under Order VII Rule 11(a) of the Code of Civil Procedure, 1908. It was decided in **Arivandandam vs. Satyapal** that—

“If on a meaningful, not formal, reading of the plaint it appears to be manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the court should reject the plaint (**AIR 1977 SC 2421**).”

24. That the present plaintiff with malafide intention filed this suit by violating their solemn duty as public servant which amounts to misguiding the court and also abusing the process of law and this court has unfettered power and inherent jurisdiction to reject the plaint to prevent abuse of the process of the court and upheld the decision of the Apex court because if this court does not do so, the faith of the common people in the decision of the court will diminish and will ultimately leads to complete anarchy in the society . It was decided in **Gopinath Das and others vs. Government of Bangladesh and others** by the High Court Division that—

“There is hardly, if ever, any controversy about the proposition of law that order VII, rule 11 of the code is not exhaustive. And if the order VII, rule 11 of the code cannot be called in aid plaint can be rejected to prevent abuse of the process of the court in exercise of the court’s inherent jurisdiction (**64 DLR 167**).”

25. That the instant matter in issue of the suit has already been heard and finally decided by the former suit no. 15/1989 by a competent court and the parties being the same, the decision of the former suit no. 15/1989 has become conclusive and is not subject to be re-opened by any other court. The instant plaint has also failed to disclose any clear right to sue which ultimately leads to the failure of establishing any cause of action. Thus, the instant plaint is not maintainable in the eye of law and liable to be rejected under Order VII Rule 11(a) &(d) of the Code of Civil Procedure, 1908. It was decided in **Eastern Bank v. Sufi Re-Rolling Mills** by the hon’ble High Court Division that—

“In sum, when a matter was directly and substantially raised as an issue, and heard and finally decided in an earlier suit by a Court having jurisdiction to try subsequent suit, such decision would become conclusive and cannot be reopened in such subsequent suit (56 DLR 2004 530).”

26. That under the aforesaid circumstances, the plaint is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure, 1908 for not disclosing any cause of action, being barred by law of limitation and principle of res-judicata. As such, the plaint is liable to be rejected and the suit is liable to be dismissed for ends of justice.

WHEREFORE, it is prayed that your honour would graciously be pleased to reject the plaint under Order VII Rule 11 read with section 151 of the Code of Civil Procedure, 1908 for ends of justice and/or pass such other order(s) granting further relief(s) as your honour deem fit and proper.

Affidavit

As usual format

CHAPTER 8

Petitions before Appellate Division

Advocate entitled to appear before the Appellate Division

A Senior Advocate, an Advocate and an Advocate-on-Record shall be entitled to appear and plead before the Court on signing his respective Roll.¹ ‘Court’ and ‘this Court’ mean the Appellate Division of the Supreme Court of Bangladesh.²

“Advocate” means a person entitled to appear and plead in the Appellate Division of the Supreme Court of Bangladesh and includes such Advocates whose names were borne on the roll of the Advocates of the Court immediately before the commencement of these Rules.³

“Advocate-on-Record” means an Advocate, who is entitled, under these Rules, to act as well as to plead for a party in the Appellate Division of the Supreme Court of Bangladesh and includes such Advocates whose names were borne on the roll of Advocate-on-Record of the Court immediately before the commencement of these Rules.⁴

“Senior Advocate” means an Advocate enrolled as such by the Court under these rules and includes all such Advocate whose names were borne on the roll of the Senior Advocates of the Court immediately before the commencement of these Rules.⁵ No Senior Advocate shall be registered as Advocate-on-Record.⁶

Appeal to the Appellate Division

Appeal can be filed against any judgment⁷ and order passed by the High Court Division. This power is mainly conferred under Article 103 of our Constitution.⁸ There are certain other laws

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1. Part I Order IV Rule 7, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.
 2. Part I Order I Rule 3(1)(f), The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.
 3. Part I Order I Rule 3(1)(a), The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.
 4. Part I Order I Rule 3(1)(b), The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.
 5. Part I Order I Rule 3(1)(r), The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.
 6. Part I Order IV Rule 16, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.
 7. “Judgment” includes decree, order, sentence or determination of any Court, Tribunal, Judge or Judicial Officers. [Part I Order I Rule 3(1)(i), The Supreme Court of Bangladesh (Appellate Division) Rules, 1988].
 8. Article 103 reads out as follows—
 - (1) The Appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.
 - (2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division—
 - (a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution ; or
 - (b) has confirmed a sentence of death or sentenced a person to death or to imprisonment for life ; or
 - (c) has imposed punishment on a person for contempt of that division ; and in such other cases as may be provided for by Act of Parliament.
 - (3) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal.
 - (4) Parliament may by law declare that the provisions of this article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division.

giving the similar kind of power, such as, Administrative Tribunals Act, 1980¹, Code of Civil Procedure, 1908², etc. All matters except criminal filed before the Appellate Division are registered as civil petition for leave to appeal. Criminal matters are registered as criminal petition for leave to appeal.

Miscellaneous Petition

When High Court Division passes any judgment/order/decreedirection, the party³ may apply for the certified copy of the same by submitting necessary requisite and filling up the form for certified copy. It takes time to get the certified copy. Sometimes, matters seem so urgent that the party cannot wait for the certified copy, or waiting for the certified copy shall cause immense loss and injury. At this juncture or interim position of time, with the serial number of the application for certified copy, the aggrieved party can file Criminal Miscellaneous Petition (in case of criminal case) or Civil Miscellaneous Petition (in case of all others except criminal). In short it is known as “CMP”.

In CMP, party can file separate application for stay or injunction or anything seeking interim relief. It is directly moved before the Hon’ble Judge-in-Chamber before the Appellate Division. After hearing the same, the Hon’ble Judge-in-Chamber pass necessary order (which is short in nature) and post the same before the regular court of Appellate Division where the Hon’ble Chief Justice of Bangladesh seats.

It is pertinent to mention that after obtaining any order or judgment in favor, the party may file advance caveat. The word caveat is neither defined under the Supreme Court of Bangladesh (Appellate Division) Rules, 1988 nor there any mandatory provision to file it. It depends upon the will of the client. However, it is the duty of the lawyer to inform the client about this system. Because, filing advance caveat gives the client with an extra protection and advantage against his/her opposite party. It gives him/her chance to know about the filing of leave petition or miscellaneous petition by the other side against his/her order or judgment passed by the High Court Division earlier or at the time of moving the same before the Hon’ble Judge-in-Chamber and the Appellate Division. It gives him/her the opportunity to engage lawyer to save his/her order or judgment passed by the High Court Division in the Hon’ble Judge-in-Chamber and the

1. Section 6A provides for the application of Article 103 in the tune “It is hereby declared that the provisions of Article 103 of the Constitution shall apply in relation to the Administrative Appellate Tribunal as they apply in relation to the High Court Division.”
2. Section 109 of the Code of Civil Procedure, 1908 provides as follows—
 “Subject to such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of Bangladesh, and to the provisions hereinafter contained, an appeal shall lie to the Appellate Division—
 (a). from any Judgment, decree or final order passed on appeal by the High Court Division or by any other Court of final appellate jurisdiction;
 (b). from any Judgment, decree or final order passed by the High Court Division in the exercise of original civil jurisdiction; and
 (c). from any Judgment, decree or final order, when the case, as hereinafter provided, is certified to be a fit one for appeal to the Appellate Division.”
3. “Party” and all words descriptive of parties to proceedings before the Court (as “petitioner, appellant, respondent,” and the like) include, in respect of all acts proper to be done by an Advocate-an-Record, the Advocate-an-Record of the party in question, when he is represented by an Advocate-an-Record.
 [Part I Order I Rule 3(1)(l), The Supreme Court of Bangladesh (Appellate Division) Rules, 1988].

Appellate Division. It prevents the other side from obtaining any order *ex-parte* or without getting any opportunity of being heard before the Hon'ble Judge-in-Chamber and the Appellate Division. It is an act of prudence and reasonableness.

Where a petition is expected to be filed, or has been filed, which does not relate to any pending appeal of which the record has been registered in the Registry of this Court, any person claiming a right to appear before this Court on the hearing of such petition may file a caveat in the matter thereof, and shall there upon be entitled to receive from the Registrar notice of the lodging of the petition, if at the time of the lodging of the caveat such petition has not yet been lodged, and, if and when the petition has been lodged, to require the petitioner to serve him with a copy of the petition and to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition. The caveator shall forthwith, after lodging his caveat, give notice thereof to the petitioner, if the petition has been filed.⁴

The word caveat remains unknown to the clients most of the time, but it is a simple thing of great importance as mentioned earlier. It is the Vokalatnama of the Appellate Division signed by the concern party who files the same through Advocate-on-Record. It is filed in the concern Section of the Appellate Division who keeps note of it. After filing, it gets an entry number. You may collect a photocopy of it for your record and also for avoiding further complexities. The party filing caveat becomes entitled to get notice from other party who is going to file leave petition or miscellaneous petition against his order or judgment of the Appellate Division. After getting any order or judgment from the High Court Division in favor, the party should file caveat as early as possible. It is a good practice.

Now, the question remains, without filing caveat is there any chance of getting notice from the opposite party of filing of such leave petition or miscellaneous petition. There is difference between theory and practice. Rules make it mandatory to serve notice of motion, and it is obliged therewith. But the practice say, serving this notice takes time or makes delay or sometimes go missing, and by that time the case meets its fate from the Hon'ble Judge-in-Chamber and the Appellate Division. But if you file caveat and engage an Advocate-on-Record, there is barely any chance to miss because your Advocate-on-Record will take care of it.

Except where otherwise provided by statute or prescribed by these Rules, all applications which in accordance with these Rules cannot be made in Chamber shall be made before the Court on motion after notice to the parties affected thereby. Where the delay caused by notice would or might entail prejudice or hardship, an application may be made for an ad interim order *ex parte*, duly supported by an affidavit and the Court, if satisfied that the delay caused by notice would entail prejudice or hardship, may make order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court may think just, pending orders on the main application by notice of motion.⁵

A notice of motion shall be instituted in the matter in which the application is intended to be made and shall state the time and place of application and the nature of the order asked for and shall be addressed to the party or parties intended to be affected by it and their Advocate-on-record, if any, and shall be signed by the Advocate-on-Record, of the party moving, or by the party himself where he acts in person.⁶

4. Part II Order XVIII Rule 2, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

5. Part I Order VI Rule 1, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

6. Part I Order VI Rule 2, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

Leave Petition

After obtaining the certified copy, party can file Criminal Petition for Leave to Appeal or Civil Petition for Leave to Appeal, which is popularly known as “CP” / “CPLA” / “Leave Petition” in short. Party may not file CMP always. They may file CP. After collecting the certified copy, the party cannot file CMP. It is always better to file CP with the certified copy unless seriously needed considering the perspectives and matter involved in the case. Like CMP, CP is also moved before the Hon’ble Judge-in-Chamber who passes necessary order therein and posts the same before the regular court of Appellate Division. Part II Order XIII provides the details of leave petition in the following manner.

Order XIII**PETITIONS FOR LEAVE TO APPEAL IN CIVIL PROCEEDINGS**

- “1. A petition for leave shall be lodged in this Court within sixty days of the judgment or order sought to be appealed from or as the case may be within thirty days from the date of the refusal of grant of certificate under Article 103(2)(a) of the Constitution, by the High Court Division :
Provided that the Court may for sufficient cause extend the time :
2. A petition for leave to appeal shall state succinctly all points of law which arise for determination and all such facts as it may be necessary to state in order to enable the Court to determine whether such leave ought to be granted and shall be signed by the counsel and/or Advocate-on-Record for the petitioner or by the party himself if he appears in person. The petition shall deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which leave to appeal is sought and where petition is moved through an Advocate-on-Record, it shall cite all previous decisions of the Court, which to the best of his knowledge, bear on the question sought to be raised in the petition.
3. The petitioner shall lodge at least ten copies, unless required otherwise by the Court, of :
 - (i) his petition for leave to appeal;
 - (ii) the judgment, decree, order sought to be appealed from one copy of which shall be certified as correct, together with grounds of appeal or application before the High Court Division;
 - (iii) Paper book of the High Court Division, if any, and the other record duly attested by the Advocate-on-Record of the petitioner;
 - (iv) the order of the High Court Division refusing grant of certificate, if any under Article 103(2)(a) ;
 - (v) an affidavit in support of allegation of fact prescribed by Rule 4 of Order XVIII hereinafter; and
 - (vi) unless a caveat, as prescribed by Order XVIII, Rule 2, has been lodged by the other party, who had appeared in the courts below; an affidavit of service of notice of the intended petition upon such party.

The petitioner shall, on demand, furnish to other parties, at their expense, on the prescribed charges, copies of all or any of the documents filed by him in the Court.

4. In an appropriate case the Registrar may require the petitioner to supply, 111 advance of the hearing of the petition, copies of the orders made in the case by all Courts subordinate to the High Court Division as well as grounds of the petition of any earlier appeal in case these documents are not already included in the paper book or record of the appeal as mentioned in Rule 3 of this Order.
5. Save in cases where caveat as prescribed by Rule 2 of Order XVIII has been lodged by other party who appeared in the Court appealed from, petitions for leave to appeal shall be heard ex-parte, but the Court may direct the petitioner to issue notice to the other party as it may deem fit, and adjourn the hearing of the petition which shall be posted for hearing after service of notice on the party concerned and upon affidavit of service by the petitioner. Where the other party has appeared in the Court appealed from, has lodged a caveat as aforesaid, notice of the hearing of the petition shall be given to the caveator, but a caveator shall not be entitled to costs of the petition unless the Court otherwise orders.
6. Where the Court grants leave to appeal, it shall, in its order, give such directions, as it may deem fit, the provision of security by the petitioner for the costs of the respondents as may be awarded by the Court on the disposal of the appeal as well as for printing charges. These directions, as far as they relate to security for costs, shall be subject to modifications at the instance of any party, at any time prior to the hearing of the appeal.
7. Subject to the provisions of these Rules, no appeal by leave of this Court shall be fixed for hearing unless the amount of security has first been deposited and subject to any directions of the Court in this behalf, the deposit shall be made within a period of one month from the date of grant of leave to appeal, failing which the leave shall stand rescinded unless otherwise ordered by the Court.
8. Except where otherwise ordered by the Court, the security shall be deposited in cash in the Bangladesh Bank, under a challan to be issued by the Registrar.
9. Where the appellant has lodged security for the costs of the respondent as well as for printing charges of the paper book, the Registrar shall deal with such security in accordance with the directions contained in order of the Court determining the appeal.
10. After the grant of leave to appeal by this Court, the case shall be registered as an appeal and the Registrar shall transmit a certified copy of the order of the Court to the Court appealed from.
11. Where a petitioner, who has obtained leave to appeal desires, prior to the receipt of the original record of the appeal in this Court, to withdraw his petition, he shall

make an application to that effect to the Court and the Court may thereupon make an order dismissing the petition. The security, if entered into by the appellant, shall be dealt with in such manner as the Court may deem fit to direct.

12. Save as otherwise provided by the preceding rules of this order, the provisions of Order XVIII hereinafter contained shall apply *mutatis mutandis* to petitions for leave to appeal,
13. The provisions contained in Order XXII shall apply as far as applicable in the case of any person seeking leave to appeal to the Court as a pauper.
14. The provisional petitions for leave to appeal will not be entertained unless all relevant documents except copy of the impugned judgment are filed.
15. No petition for leave to appeal will be received without requisite number of paper books except on properly stamped application filed before the Court for granting time. If a petitioner unduly delays in bringing a petition to a hearing, action shall be taken by the office under rule 10, Order XVIII of these Rules.”

Appeal

No appeal without the leave of the Appellate Division can be filed before the Appellate Division. When a CP is moved before the Appellate Division, it is the absolute discretion and power of the Appellate Division whether to grant any leave or not. If leave is granted, then party will file Civil Appeal / Criminal Appeal. It is shortly known as “CA”. In CA, the parties need to file Concise Statement. Against any judgment in Civil/Criminal Appeal, review petition can be filed with Senior Counsel Certificate along with application for interim relief, if necessary. If no leave is granted, then there is no scope of filing Civil/Criminal Appeal. However, the party can still file review application against the said judgment/order.

The concise statement shall consist of paragraphs numbered consecutively and shall state, as precisely as possible, in chronological order, the principal steps in the proceedings leading up to the appeal from the commencement thereof down to the admission of the appeal, and thereafter, the contentions to be urged by the party filing the same, and the reasons therefor and shall be printed or neatly typed with quarter margin, on one side of standard petition paper, of the same size as the printed record. References by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed or typed in the margin, and care shall be taken to avoid, as far as possible, the reproducing in the concise statement of long extracts from the record. The counsel preparing the concise statements should also cite all previous decisions of the Appellate Division of the Supreme Court of Bangladesh to the best of their knowledge bearing on the questions proposed to be raised in the appeal. The Taxing Officer in taxing the costs of the appeal shall, either of his own motion, or at the instance of the opposite party, enquire into any unnecessary prolixity in the concise statement, and may disallow the cost so occasioned thereby.⁷

7. Part II Order XIX Rule 6, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

Review

Review application must be forwarded with a Senior Council Certificate. Only the lawyers who are certified as the Senior Advocate can file review petition.⁸ Most of the cases are decided in CP whether to grant leave or not.

Generally, parties in the case/suit can file CMP, CP, CA, Review, etc. However, with the kind leave of the Appellate Division, any necessary party showing their interest can file the same. All the petitions before the Appellate Division are filed through the ‘Advocate-on-Record’⁹.

Power of Hon’ble Judge-in-Chamber

Procedures and formats for filling any petition/application before the Appellate Division are governed under the Supreme Court of Bangladesh (Appellate Division) Rules, 1988. Appellate Division enjoys ample power while disposing of the leave petitions or appeal. It comes from Constitution and other Statutes conferring such powers. However, the powers of the Court in relation to the following matters may be exercised by a single Judge sitting in Chamber but subject to reconsideration, at the instance of any aggrieved party by a Bench of not less than three Judges, which may include the Judge who dealt with the matter¹⁰ —

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8. (1) Subject to the law and the practice of the Court, the Court may, either of its own motion or on the application of a party to a proceeding, review its judgment or order in a Civil proceeding on grounds similar to those mentioned in Order XLVII, rule 1 of the Code of Civil Procedure and in a Criminal proceeding on the ground of an error apparent on the face of the record.
 - (2) Applications for review shall be filed in the Registry within thirty days after pronouncement of the judgment, or, as the case may be, the making of the order, which is sought to be reviewed. The applicant shall, after filing the application for review, forthwith give notice thereof to the other party and endorse a copy of such notice to the Registry.
 - (3) Every application for review shall be accompanied by a certified copy of the judgment or order complained of and when the application proceeds on the ground of a discovery of fresh evidence certified copies of the documents, if any relied upon, shall be annexed to the application, together with an affidavit setting forth the circumstances under which such discovery has been made.
 - (4) No such application shall be entertained unless it is signed by a Senior Advocate who, in this behalf: shall not be governed by the restrictions contained in clause 2 of the First Schedule to these rules.
 - (5) The Senior Advocate signing the application shall specify in brief the points upon which the prayer for review is based, and shall add a certificate to the effect, that consistently with the law and practice of the Court, a review would be justifiable in the case. The certificate shall be in the form of a reasoned opinion.
 - (6) Except with the special leave of the Court, no application for review shall be drawn by any Advocate other than the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made. Such Advocate shall, unless his presence has been dispensed with by the Court, be present at the hearing of the application for review.
 - (7) As far as practicable the application for review shall be posted before the same Bench that delivered the judgment or order sought to be reviewed.
 - (8) After the final disposal of the first application for review no subsequent application for review shall lie to the Court and consequently shall not be entertained by the Registry.
 - (9) No application for review shall be entertained unless party seeking review furnishes a cash security of Tk. 10,000, which shall be liable to be forfeited 14 if the review petition is dismissed.
[Part IV Order XXVI, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988].
 9. “Advocate-on-Record” means an Advocate, who is entitled, under these Rules, to act as well as to plead for a party in the Appellate Division of the Supreme Court of Bangladesh and includes such Advocates whose names were borne on the roll of Advocate-on-Record of the Court immediately before the commencement of these Rules.
[Part I Order I Rule 3(1)(b), The Supreme Court of Bangladesh (Appellate Division) Rules, 1988].
 10. Part I Order V Rule 2, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988].

- (1) Applications for production of documents outside Court premises.
- (2) Applications for leave to compromise or discontinue pauper appeals.
- (3) Applications for striking out or adding party.
- (4) Applications for better statement of claim or defence.
- (5) Applications for particulars.
- (6) Applications to withdraw appeals and petitions.
- (7) Applications for payment of money out of Court or handing over or discharge of security.
- (8) Applications of tax bills returned by Taxing Officer.
- (9) Applications for costs of taxation where one-sixth is taxed off.
- (10) Applications for review of taxation by Court.
- (11) Applications for enlargement or abridgment of time, except those covered by item 7 of rule 1 and applications for condonation of delay in filing petitions for leave to appeal.
- (12) Applications for issue of commissions.
- (13) Applications for security of costs.
- (14) Applications for assignment of Security Bonds.
- (15) Applications for enforcing payment of costs under directions of Registrar.
- (16) Applications for extending returnable dates of warrants.
- (17) Applications for order against clients for payment of costs.
- (18) Applications for production of evidence by affidavit.
- (19) Applications for taxation and delivery of bills of costs, and for the delivery by an Advocate-on-record of documents and papers.
- (20) Applications for stay of execution of a decree or order in Civil Proceedings.
- (21) Applications for stay of execution of sentence or order in Criminal Proceedings.
- (22) Applications for the grant of bail.
- (23) Enrolment of Advocates and of Advocates-on-Record.
- (24) Setting down cause, appeal or matter ex parte.
- (25) Consent petitions.
- (26) Applications for bringing on record the legal representatives of a deceased party.
- (27) Applications for change of Advocate-on-Record.
- (28) Applications by Advocate-on-Record for leave to withdraw.

No notice of motion in relation to a Civil appeal under this order shall be entertained unless it is accompanied by a certified copy of the certificate granted by the High Court Division.¹¹ Where a certificate has been granted under Article 103(2)(a) of the Constitution, any party who desires to appeal shall file a petition of appeal in the Court.¹² The petition of appeal shall be presented within thirty days from the date of the grant of the certificate by the High Court Division or the

11. Part II Order XII Rule 1, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

12. Part II Order XII Rule 2, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

date of impugned judgment, decree or final order of the High Court Division: provided that in computing the said period, the time requisite for obtaining a copy of the certificate and the order granting the said certificate, shall also be excluded.¹³ The petition shall set forth the appellant's objections to the decision of the High Court Division, and where the appellant desires to raise other grounds in the appeal, the petition of appeal shall be accompanied by a separate petition indicating the grounds so proposed to be raised and praying for leave to appeal on those grounds and the petition for leave, shall, unless the Court otherwise directs, be heard at the same time as the appeal. Copies of the petition of the appeal shall be saved on the respondent.¹⁴

The petition of appeal shall be accompanied by—

- (i) Certified copies of the judgment and decree or final order appealed against, and of Courts below;
- (ii) a certified copy of the certificate granted under Article 103(2)(a) where that certificate is not embodied in the judgment; and
- (iii) an affidavit of service of copy of the petition of appeal on the respondent.¹⁵

Within thirty days of the service on him of the petition of appeal, a respondent may, if he so desires, file in this Court his objections, if any, to the grounds taken by the Appellant in his petition of appeal, and to the appellant's right to raise in the appeal any question other than those bearing on the question of law to which the certificate relates.¹⁶

A petition for leave to appeal in civil proceedings shall be lodged in this Court within sixty days of the judgment or order sought to be appealed from or as the case may be within thirty days from the date of the refusal of grant of certificate under Article 103(2)(a) of the Constitution, by the High Court Division : provided that the court may for sufficient cause extend the time.¹⁷

Criminal Appeals under Article 103(2)(a) of the Constitution shall be lodged within thirty days from the date of the certificate granted by the High Court Division, and appeals under Article 103(2) (b) and (c) within thirty days from the date of the judgment final Order or sentence appealed from : provided that the court may for sufficient cause extend the time.¹⁸ The Memorandum of appeal shall be in the form of a petition in writing which shall be accompanied by a certified copy of the judgment or order appealed against and in the case of appeals under Article 103(2)(a) of the Constitution also by a certified copy of the certificate granted by the High Court Division. The appellant shall file at least six copies of his petition and the accompanying documents.¹⁹

13. Part II Order XII Rule 3, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

14. Part II Order XII Rule 4, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

15. Part II Order XII Rule 5, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

16. Part II Order XII Rule 6, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

17. Part II Order XII Rule 1, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

18. Part II Order XXIII Rule 1, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

19. Part II Order XXIII Rule 2, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988.

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL PETITION FOR LEAVE TO APPEAL NO. _____ OF 2020.
(Arising out of Writ Petition No. 760 of 2019)

IN THE MATTER OF :

An application under Article 103 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF :

Roma Auto Rice Mills Limited, represented by its Managing Director, Md. Mir Sahe Alam, of Betgari, Post- Aliarhat, Police Station- Shibgonj, District- Bogura.

..... **PETITIONER**
(Petitioner in Writ Petition)

–Versus–

1. Bangladesh Bank, represented by the Governor, Bangladesh Bank Bhahan, Motijheel Commercial Area, Police Station Motijheel, Dhaka.
2. District Magistrate, office of District Magistrate, Bogura, Judicial Munshikhana, Bogura.
3. Police Super, Office of Police Super, Bogura.
4. Deputy Commissioner, office of Deputy Commissioner, Bogura.
5. Additional Deputy Commissioner (Revenue), office of Deputy Commissioner, Bogura.
6. Assistant Commissioner of Land and Executive Magistrate, office of Deputy Commissioner, Bogura.
7. Mayor, Shibgonj Pourashava, office of Mayor of Shibgonj Pourashava, Bogura.
8. Dhaka Bank Limited, Head Office, 71, Purana Paltan Lane, Dhaka.
9. The Manager, Dhaka Bank Limited, Bogura Branch, Bogura.

..... **Respondents**
(Respondents in Writ Petition)

AND**IN THE MATTER OF**

Order dated 15.12.2019 passed by the High Court Division in Writ Petition No. 9940 of 2019 rejecting the application for stay.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Hon'ble companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That this Civil Petition for Leave to Appeal is directed against the Order dated 15.12.2019 passed by the High Court Division in Writ Petition No. 9940 of 2019 rejecting the application for stay.
2. That the petitioner filed this writ petition contending inter-alia that—
 - “a) That the petitioner is a private limited company doing rice business in our country.
 - b) That in course of business the petitioner obtained loan from the respondent No. 9 bank vide sanction advice dated 13.11.2017. By that sanction advice the validity of term loan was given for 6 (six) years including three months moratorium period, cash credit (hypo) for 1 (one) year from the date of first disbursement and short term loan for 1 (one) year from the date of first disbursement.
 - c) That in spite of the fact that the rice business is going down for last few years in our country and the Bangladesh Bank has provided incentives time to time to the businessman for recovering their loss and also for ensuring their sustainability, the petitioner continued to make payment regularly though not in the prescribed installments. The payment procedures showing good intention of the petitioner is also evident from the bank statement of the relevant accounts.
 - d) That however on 19.08.2018 the respondent No. 9 bank issued a letter showing the status of the aforesaid loan of the petitioner as UC (unclassified/regular) for CC (hypo), SMA, SS (special mentioned account, substandard) for revolving short term loan and SS (substandard) for term loan. The same status was also shown in letter dated 1.10.2018, 16.10.2018 and 21.10.2018.
 - e) That under the circumstances the respondent No. 9 also served three legal notices under section 138 of the Negotiable Instruments Act, 1881 on 25.10.2018, 15.11.2018 and 26.12.2018; against which the petitioner replied in time.
 - f) That in a certificate provided by the respondent No. 9 bank on 31.12.2018 it was shown that two loans of the petitioner were showed DF (doubtful).
 - g) That meanwhile the petitioner repeatedly communicated with the respondent No. 9 bank to provide it continuous bank support and not to show its name in the CIB

report so that it can do business and repay the loan, but the bank did not show any minimum positive/co-operative attitude towards the petitioner. Therefore, finding no other alternative the petitioner asked for help from the Bangladesh Bank vide letter dated 13.12.2018 stating all the details against the loan in question.

- h) That the petitioner informed the respondent No. 9 bank for giving it chance to repay the loan by availing continuous bank support, otherwise the petitioner will be bound to close the company.
- i) That without showing any positive co-operation to the petitioner, the respondent No. 9 bank continued to create unfair and unreasonable pressure upon the petitioner by serving legal notice on 20.02.2019 under Artha Rin Adalat Ain and also on 7.03.2019 under Negotiable Instruments Act. In response to the same, the petitioner replied in positive manner and requested the bank to co-operate, but the bank paid no heed thereto.
- j) That on 4.04.2019 the bank issued another letter showing the present status of the loan as BL (bad and loss) and also asking for some documents. In response to the same the petitioner submitted a letter along with Tk. 8,00,000/- (eight lac) only in advance as down payment for reschedulement of the loan. Thereafter, on 27.06.2019 the petitioner again gave Tk. 5,00,000/- (five lac) only as rest amount of down payment.
- k) That the petitioner deposited that money as down payment for reschedulement of loan on the basis of verbal commitment of the respondent No. 9 bank. On their commitment the petitioner again submitted a letter on 7.07.2019 for rescheduleding/restructuring the loan as per BRPD Circular No. 5 dated 16.05.2019 issued by the Bangladesh Bank, and the respondent No. 9 bank also committed to the petitioner that they will process the reschedulement as per the said circular.
- l) That very surprisingly the bank submitted a letter on 26.08.2019 before the Mayor, Shibgonj Pourashava asking for his permission to do announcement for selling out the mortgage property of the petitioner. When the petitioner came to know about said letter dated 28.08.2019 submitted a letter to the Mayor for not allowing the bank to do such kind of illegal and unreasonable activity.
- m) That under the situation without serving any notice to the petitioner or giving any opportunity for rescheduling the loan even after receiving the amount of down payment, the respondent No. 9 bank filed an application before the respondent No. 2 which was registered as Dairy No. 84 dated 25.03.2019 for taking control and possession under section 12(5)(ka) of the Artha Rin Adalat Ain, 2003 and the same was allowed by the respondent No. 2 vide office order being No. 05.50.1000.011.10.005.19.1388(08) dated 29.08.2019 (*henceforth referred to as the impugned order*). No such office order or any notice prior to that office order was served upon the petitioner. However, the petitioner somehow collected a letter from a reliable source.

3. That after hearing the learned Advocate for the petitioner at the time of motion hearing the Hon'ble Court was pleased to issue Rule Nisi and grant stay for a period of 3 (three) months vide Order dated 9.09.2019.
4. That during the pendency of the Writ Petition, the respondent bank published an auction notice under section 12(3) of the Artha Rin Adalat Ain, 2003. Thereafter, the petitioner filed an application for stay of the said auction stating inter-alia as follows—
 - “a) That above writ petition has been filed challenging the Office order bearing Memo No. 05.50.1000.011.13.005.19-1388(08) dated 29.08.2019 issued under the signature of the respondent No. 2 by dint of a Diary No. 84 dated 25.03.2019 lodged by the respondent No. 9 for taking control and possession of the mortgaged land of the petitioner under section 12(5)(ka) of the Artha Rin Adalat Ain, 2003 (Annexure- M).
 - b) That after hearing the learned Advocate of the petitioner and perusing the documents, a Division Bench of the Hon'ble High Court Division comprising of their Lordships Mr. Justice M. Enayetur Rahim and Mr. Justice Md. Khairul Alam was pleased to issue Rule Nisi and grant stay of the impugned memo for a period of 3 (three) months vides Order dated 9.09.2019.
 - c) That during the pendency of the said writ petition, the respondent nos. 8-9 bank published the auction notice on 14.11.2019 fixing the date of auction on 27.11.2019 in the national daily newspaper namely “Jai Jai Din” at Page No. 04 and the local daily newspaper “Daily Korotoa” at Page No. 07 (**Annexure “O & O-1”**) under Section 12 of the Artha Rin Adalat Ain, 2003 for selling the schedule property described thereto.
 - d) That it is pertinent to mention that the petitioner has already repaid the required amount of down-payment for re-schedulement of the loan as per BRPD Circular No. 5 dated 16.05.2019.
 - e) That in course of business the petitioner obtained loan from the respondent No. 9 bank vides sanction advice dated 13.11.2017. By that sanction advice the validity of term loan was given for 6 (six) years including three months moratorium period, cash credit (hypo) for 1 (one) year from the date of first disbursement and short term loan for 1 (one) year from the date of first disbursement. The total period of loan has not been expired yet.
 - f) That in spite of the fact that the rice business is going down for last few years in our country and the Bangladesh Bank has provided incentives time to time to the businessman for recovering their loss and also for ensuring their sustainability, the petitioner continued to make payment regularly though not in the prescribed installments. The petitioner informed the respondent No. 9 bank for giving it chance to repay the loan by availing continuous bank support, otherwise the petitioner will be bound to close the company. Without showing any positive co-operation to the petitioner, the respondent No. 9 bank continued to create unfair and unreasonable pressure upon the petitioner by serving legal notice on 20.02.2019 under Artha Rin Adalat Ain and also on 7.03.2019 under Negotiable Instruments Act. In response to

the same, the petitioner replied in positive manner and requested the bank to co-operate, but the bank paid no heed thereto.

- g) That the petitioner deposited that money as down payment for reschedulement of loan on the basis of verbal commitment of the respondent No. 9 bank. On their commitment the petitioner again submitted a letter on 7.07.2019 for rescheduleding/restructuring the loan as per BRPD Circular No. 5 dated 16.05.2019 issued by the Bangladesh Bank, and the respondent No. 9 bank also committed to the petitioner that they will process the reschedulement as per the said circular.
 - h) That the petitioner is carrying out rice/paddy business for a long period of time and it is its only business. The Bangladesh Bank has time to time provided several incentives to the rice/paddy business but the respondent No. 9 showed no tendency of co-operation. Moreover, rice/paddy business is also given priority in reschedulement process, but the respondent No. 9 also did not show any interest thereto. The petitioner recently entered into Agreement with ACI Foods Limited for supplying paddy but due to the non-cooperation of the respondent bank, the ACI is showing concern for cancelling the agreement which will ultimately ruin the entire business of the petitioner and make it unable forever to repay the laon.
 - i) That it is submitted that the respondent No. 9 bank published the auction notice under section 12(3) of the Artha Rin Adalat Ain while the proposal for reschedulement is still pending before it on payment of required downpayment. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, and as such the same is liable to be stayed for ends of justice.”
5. That after hearing the parties and perusing the application, the High Court Division vides Order dated 26.11.2019 kept the matter adjourned until 11.12.2019.
6. That thereafter petitioner filed a supplementary affidavit stating inter-alia as follows—
- “a) That the petitioner has all the good intention to settle the loan account with the respondent bank amicably by way of doing business and making repayment of the loan from the output of the business. The petitioner has always extended its co-operation towards the respondent bank but the bank has never co-operated with the petitioner. On 9.12.2019 the petitioner further deposited Tk. 10,00,000/- (Taka Ten Lac) only against the loan in question along with a letter, but the respondent bank showed no positive or co-operative hand to the petitioner, which does not fall within the good banking business, norms and practice.”
7. That after hearing the parties and perusing the documents, the High Court Division rejected the said application for stay of the petitioner vides Order dated 15.12.2019 (*henceforth referred to as ‘the impugned order’*) without considering that the petitioner was repaying the loan.
8. That it is submitted that the High Court Division committed an error of law passing the impugned order dated 15.12.2019 rejecting the application for stay of the auction process scheduled to be held on 27.11.2019 vide auction notice published on 14.11.2019 in the national daily newspaper namely “Jai Jai Din” at Page No. 04 and the local daily

newspaper “Daily Korotoa” at Page No. 07 (**Annexure “O & O-1”**) under Section 12(3) of the Artha Rin Adalat Ain, 2003 for selling the schedule property described thereto. As such, the impugned order is liable to be set aside for ends of justice.

9. That it is submitted that the respondent No. 9 bank published the auction notice under section 12(3) of the Artha Rin Adalat Ain while the proposal for reschedulement is still pending before it on payment of required downpayment. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be set aside for ends of justice.
10. That it is submitted that the respondent No. 8-9 acted very illegally, malafide and arbitrarily in publishing the auction notice without serving any notice to the petitioner or giving it with any opportunity of being heard which is a clear violation of the principles of natural justice. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to examine this issue. As such, the impugned order is liable to be set aside for ends of justice.
11. That it is submitted that the impugned auction notice has been published without serving 15 (fifteen) days time as mandated under Section 48 read with section 33 and 12 of the Artha Rin Adalat Ain, 2003. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to examine this issue. As such, the impugned order is liable to be set aside for ends of justice.
12. That it is submitted that the petitioner is neither a regular nor an intentional defaulter. As it appears from the bank statements that it has always tried to make payment to the bank against the loan in question and lastly on the basis of commitment of the bank it deposited the amount of down payment for reschedulement and bank received the same. In December, 2018 the respondent No. 9 bank showed the petitioner as defaulter but when after the BRPD Circular No. 5 dated 16.05.2019 came into operation and the petitioner requested to give it the facility of reschedulement under that circular, the respondent No. 9 bank very surprisingly shifted from its earlier position and showed it defaulter since April 2019 which is after December 2018 with the malafide intention to deprive it of the facility of that BRPD circular. If that had been the case, the petitioner should not be treated as defaulter at all since the statutory period of 6 (six) months for considering a borrower defaulter as provided under section 27KaKa read with BRPD Master circular No. 15 of 2015. But now the bank is filing cases one after another under the Negotiable Instrument Act and also creating unfair and unreasonable pressure upon the petitioner in different ways. As a part of that malafide and unfair practice, the bank filed application under section 12(3) without giving any opportunity of being heard to the petitioner. This is absolutely a violation of the fundamental right of the petitioner as guaranteed under the Constitution of Bangladesh. As such, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be set aside for ends of justice.

13. That it is submitted that considering the balance of convenience and inconvenience, the greater inconvenience shall be suffered by the petitioner if the impugned auction is not stayed. Because the respondent No. 9 bank has already filed cases under section 138 of the Negotiable Instruments Act, and there are other alternatives too for the bank to recover the loan; but the impugned auction process is a deadly for the petitioner. As such, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be set aside for ends of justice.
14. That it is submitted that the petitioner has all the good intention to settle the loan account with the respondent bank amicably by way of doing business and making repayment of the loan from the output of the business. The petitioner has always extended its co-operation towards the respondent bank but the bank has never co-operated with the petitioner. On 9.12.2019 the petitioner further deposited Tk. 10,00,000/- (Taka Ten Lac) only against the loan in question along with a letter, but the respondent bank showed no positive or co-operative hand to the petitioner, which does not fall within the good banking business, norms and practice. As such, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be set aside for ends of justice.
15. That in the premises aforesaid the petitioner being aggrieved by and dissatisfied with the order dated 15.12.2019 passed by the High Court Division in Writ Petition No. 760 of 2019 rejecting the application for stay of the auction process scheduled to be held on 27.11.2019 vide auction notice published on 14.11.2019 in the national daily newspaper namely “Jai Jai Din” at Page No. 04 and the local daily newspaper “Daily Korotoa” at Page No. 07 (**Annexure “O & O-1”**) under Section 12(3) of the Artha Rin Adalat Ain, 2003 for selling the schedule property described thereto, begs to file this Civil Petition for Leave to Appeal before the Appellate Division on the following amongst others—

G R O U N D S

- I. For that the High Court Division committed an error of law passing the impugned order dated 15.12.2019 rejecting the application for stay of the auction process scheduled to be held on 27.11.2019 vide auction notice published on 14.11.2019 in the national daily newspaper namely “Jai Jai Din” at Page No. 04 and the local daily newspaper “Daily Korotoa” at Page No. 07 (**Annexure “O & O-1”**) under Section 12(3) of the Artha Rin Adalat Ain, 2003 for selling the schedule property described thereto. As such, the impugned order is liable to be set aside for ends of justice.
- II. For that the respondent No. 9 bank published the auction notice under section 12(3) of the Artha Rin Adalat Ain while the proposal for reschedulement is still pending before it on payment of required downpayment. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be set aside for ends of justice.

- III. For that the respondent No. 8-9 acted very illegally, malafide and arbitrarily in publishing the auction notice without serving any notice to the petitioner or giving it with any opportunity of being heard which is a clear violation of the principles of natural justice. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to examine this issue. As such, the impugned order is liable to be set aside for ends of justice.
- IV. For that the impugned auction notice has been published without serving 15 (fifteen) days time as mandated under Section 48 read with section 33 and 12 of the Artha Rin Adalat Ain, 2003. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to examine this issue. As such, the impugned order is liable to be set aside for ends of justice.
- V. For that the petitioner is neither a regular nor an intentional defaulter. As it appears from the bank statements that it has always tried to make payment to the bank against the loan in question and lastly on the basis of commitment of the bank it deposited the amount of down payment for reschedulement and bank received the same. In December, 2018 the respondent No. 9 bank showed the petitioner as defaulter but when after the BRPD Circular No. 5 dated 16.05.2019 came into operation and the petitioner requested to give it the facility of reschedulement under that circular, the respondent No. 9 bank very surprisingly shifted from its earlier position and showed it defaulter since April 2019 which is after December 2018 with the malafide intention to deprive it of the facility of that BRPD circular. If that had been the case, the petitioner should not be treated as defaulter at all since the statutory period of 6 (six) months for considering a borrower defaulter as provided under section 27KaKa read with BRPD Master circular No. 15 of 2015. But now the bank is filing cases one after another under the Negotiable Instrument Act and also creating unfair and unreasonable pressure upon the petitioner in different ways. As a part of that malafide and unfair practice, the bank filed application under section 12(3) without giving any opportunity of being heard to the petitioner. This is absolutely a violation of the fundamental right of the petitioner as guaranteed under the Constitution of Bangladesh. As such, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be set aside for ends of justice.
- VI. For that the petitioner has all the good intention to settle the loan account with the respondent bank amicably by way of doing business and making repayment of the loan from the output of the business. The petitioner has always extended its co-operation towards the respondent bank but the bank has never co-operated with the petitioner. On 9.12.2019 the petitioner further deposited Tk. 10,00,000/- (Taka Ten Lac) only against the loan in question along with a letter, but the respondent bank showed no positive or co-operative hand to the petitioner, which does not fall within the good banking business, norms and practice. As such, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be set aside for ends of justice.

WHEREFORE, it is most humbly prayed that this Hon'ble Court would graciously be pleased to grant leave to appeal and /or to pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Drawn and filed by :

Advocate-on-record
For the Petitioner.

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL PETITION FOR LEAVE TO APPEAL NO. OF 2020.
(Arising out of Writ Petition No. 760 of 2019)

IN THE MATTER OF:
An application for stay.

AND

IN THE MATTER OF:
Roma Auto Rice Mills Limited

..... **Petitioner.**

V E R S U S

Bangladesh Bank, represented by the Governor,
Bangladesh Bank Bhahan, Motijheel Commercial Area,
Police Station Motijheel, Dhaka and others.

..... **Respondents.**

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That this application for stay is directed against the order dated 15.12.2019 passed by the High Court Division in Writ Petition No. 9940 of 2019 rejecting the application for stay.
2. That it is submitted that the High Court Division committed an error of law passing the impugned order dated 15.12.2019 rejecting the application for stay of the auction process scheduled to be held on 27.11.2019 vide auction notice published on 14.11.2019 in the national daily newspaper namely “Jai Jai Din” at Page No. 04 and the local daily newspaper “Daily Korotoa” at Page No. 07 (**Annexure “O & O-1”**) under Section 12(3) of the Artha Rin Adalat Ain, 2003 for selling the schedule property described thereto. As such, the impugned order is liable to be stayed for ends of justice.
3. That it is submitted that the respondent No. 9 bank published the auction notice under section 12(3) of the Artha Rin Adalat Ain while the proposal for reschedulement is still pending before it on payment of required downpayment. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be stayed for ends of justice.
4. That it is submitted that the respondent No. 8-9 acted very illegally, malafide and arbitrarily in publishing the auction notice without serving any notice to the petitioner or giving it with any opportunity of being heard which is a clear violation of the principles of natural justice. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to examine this issue. As such, the impugned order is liable to be stayed for ends of justice.
5. That it is submitted that the impugned auction notice has been published without serving 15 (fifteen) days time as mandated under Section 48 read with section 33 and 12 of the Artha Rin Adalat Ain, 2003. Under the circumstances, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to examine this issue. As such, the impugned order is liable to be stayed for ends of justice.
6. That it is submitted that the petitioner is neither a regular nor an intentional defaulter. As it appears from the bank statements that it has always tried to make payment to the bank against the loan in question and lastly on the basis of commitment of the bank it deposited the amount of down payment for reschedulement and bank received the same. In December, 2018 the respondent No. 9 bank showed the petitioner as defaulter but when after the BRPD Circular No. 5 dated 16.05.2019 came into operation and the petitioner requested to give it the facility of reschedulement under that circular, the respondent No. 9 bank very surprisingly shifted from its earlier position and showed it defaulter since April 2019 which is after December 2018 with the malafide intention to deprive it of the facility of that BRPD circular. If that had been the case, the petitioner should not be treated as defaulter at all since the statutory period of 6 (six) months for considering a borrower defaulter as provided under section 27KaKa read with BRPD Master circular No. 15 of 2015. But now the bank is filing cases one after another under the Negotiable Instrument

Act and also creating unfair and unreasonable pressure upon the petitioner in different ways. As a part of that malafide and unfair practice, the bank filed application under section 12(3) without giving any opportunity of being heard to the petitioner. This is absolutely a violation of the fundamental right of the petitioner as guaranteed under the Constitution of Bangladesh. As such, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be stayed for ends of justice.

7. That it is submitted that considering the balance of convenience and inconvenience, the greater inconvenience shall be suffered by the petitioner if the impugned auction is not stayed. Because the respondent No. 9 bank has already filed cases under section 138 of the Negotiable Instruments Act, and there are other alternatives too for the bank to recover the loan; but the impugned auction process is a deadly for the petitioner. As such, the publication of auction notice is absolutely illegal, arbitrary and malafide, but the High Court Division failed to appreciate this issue. As such, the impugned order is liable to be stayed for ends of justice.

WHEREFORE, it is most humbly prayed that this Hon'ble Court would graciously be pleased to stay the auction process scheduled to be held on 27.11.2019 vide auction notice published on 14.11.2019 in the national daily newspaper namely "Jai Jai Din" at Page No. 04 and the local daily newspaper "Daily Korotoa" at Page No. 07 (**Annexure "O & O-1"**) under Section 12(3) of the Artha Rin Adalat Ain, 2003 for selling the schedule property described thereto till disposal of this leave petition and /or pass such other or further order or orders as to this Hon'ble Court may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Drawn and filed by :

Advocate-on-record
For the Petitioner.

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL MISCELLANEOUS PETITION NO. _____ OF 2019.
(Arising out of Writ Petition No. 2909 of 2019)

IN THE MATTER OF:

An application for permission to swear affidavit

AND**IN THE MATTER OF**

Ansarul Haq

.....**Petitioner**–***VERSUS***–

Md. Shamsul Hoque Jonto and others.

.....**Respondents****AND****IN THE MATTER OF:**

Ansarul Haq, Acting Chairman of No. 5 Jatia Union Parishad, Ishwargonj, Mymensingh, son of Abdul Halim and Monowara Khatun of Village-Harishor, Post Office-Jatia, Police Station-Ishwargonj, District-Mymensingh.

..... **Applicant**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Supreme Court of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition of the petitioner most respectfully—

S H E W E T H :

1. That this application on behalf of the applicant-petitioner has been filed as a 3rd party for permission to swear affidavit for filing a Civil Miscellaneous Petition against the order dated 14.03.2019 passed by the High Court Division in Writ Petition No. 2909 of 2019 staying the notice under Memo No. 05.45.6131.002.01.002.19-117 (50) dated 28.02.2019 vacating the post of the Chairman of the Jatia Union Parishad No. 5, Ishwargonj, Mymensingh.
2. That it is stated that the petitioner is one of the members of the Panel Chairman of 5 No. Jatai Union Parishad, Ishwargonj, Mymensingh and hence was a necessary party for proper disposal of the Writ Petition. But he was not made a party at the time of filing writ petition by the respondent No. 1 so that he can obtain order keeping the petitioner in dark.

3. That it is stated that since the petitioner is the current Panel Chairman of the 5 No. Jatai Union Parishad and has been performing the functions as an acting Chairman on priority basis from among the Panel, he has directly been affected and prejudiced by the impugned order passed by the High Court Division. As the petitioner has not been party in the Writ Petition, he craves leave of this Hon'ble Court to swear affidavit and to file this Civil Miscellaneous Petition before this Hon'ble Court for securing ends of justice.
4. That it is submitted that the High Court Division passed the impugned order ignoring the clear provision of law and the same should be interfered by this Hon'ble Court for securing ends of justice. Hence, the petitioner should be given permission to swear affidavit of this Civil Miscellaneous Petition.

WHEREFORE, it is most humbly prayed that this Hon'ble Court would graciously be pleased to give permission to the petitioner to file Civil Miscellaneous Petition as 3rd party petitioner and /or pass such other or further order or orders as to this Hon'ble Court may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Drawn and filed by :

(.....)
Advocate-on-record
For the Petitioner

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CRIMINAL APPELLATE JURISDICTION)**

CRIMINAL APPEAL NO. _____ of 2018
(Arising out of CrP No. 82 of 2017)

IN THE MATTER OF:

Securities and Exchange Commission.

.....**Complaint-Opposite Party-Petitioner-
Appellant.**

Versus

Beximco Pharmaceuticals Ltd and others.

.....**Accused-Petitioners-Respondents.**

CONCISE STATEMENT ON BEHALF OF THE ACCUSED-PETITIONER-RESPONDENT NOS. 1-4 —

1. The prosecution case, in brief, is that a complaint petition was filed by the petitioner i.e. Securities and Exchange Commission (hereinafter referred to as SEC) through one M.A. Rashid Khan, Executive Director alleging, inter-alia, that the respondent No. 1 company and the other respondent as directors of the respondent No. 1 company were involved in fraudulent activities in the year 1996 during the month of July to December within the mischief of Section 17 of the Securities and Exchange Ordinance, 1969 (hereinafter referred to as 'the said Ordinance') which was detected by an Enquiry Committee set up by the Securities and Exchange Commission (hereinafter referred to as the committee) under section 21 of the said Ordinance. This Committee provides an inquiry report (hereinafter referred to as Report) against numerous companies including the respondent No. 1 company and its directors who are liable to be punished under section 24 of said Ordinance. Quoting of paragraphs of said report (i.e. the relevant portion), the complainant filed the instant complaint petition stating inter alia that "this is a Company of Beximco Group with 2.95 crore shares of Tk. 10 each. Book value per share as per DSE statement is Tk. 29.0; Market price was Tk. 27, on 30.06.96, Tk.91 on 31.07.96 Tk. 88 on 31.08.96 Tk. 167 on 30.9.96 and tk. 468, on 16.11.96. The highest price was Tk. 551. It may be mentioned that originally face value of the shares was 100. Company offered right share 1:1 in 1994 with a premium of Tk. 1100. It appears that the premium was over calculated. As per our analysis reasonably acceptable premium appears to be around 800 crore. Because of the overcharging of premium the new share holders capital fund involvement per share was higher than that of existing shareholders to the extent of the difference between the premium realized and realizable. "The company subsequently split the share and fixed the face value of share at Tk. 10. Taking into account the premium portion of the share market price of this share as on 30.6.96, 31.07.96 and 31.08.96 was below investment value. It appears from the trading records of DSE that 1.24 crore share of this company have been sold. More than 60% of these sales have been made by only few brokers namely Imtayaz Hossain, Premium Securities, SEC and Hamayat Uddin. It has further been observed that HMMS + Associates sold 11,01,000 shares through foreign DVP which could not be traced directly in DSE record. Similarly, Security Consultant Limited sold 1,71,450 shares which also could not be traced directly in DSE record. As per foreign DVP statement submitted by a Bank Indosues and Standard Chartered Bank, Imtayaz Hossain sold 30,15,510 whereas as per DSE record total shares should by him was 29,26,785 only. Again as per bank statement M/S. SES sold 13,98,800 but as per DSE record it was 908,200.... Therefore it follows that a significant portion of these shares have found its way to so called kerb Market. There are reports from people interviewed that some brokers, come big shareholders and some group employees were active outside DSE. From the above analysis it is evident that the mal-practice was resorted to in this case also. These come within the mischief under section 17 of Securities and Exchange Ordinance, 1969".

The complaint petition was filed in the Court of the learned Chief Metropolitan Magistrate, Dhaka who took cognizance of the case being Complaint Petition Case No. 1080 of 1997 and after complying with the formalities sent the record to the Sessions Court, Dhaka for holding trial. This court registered the case as Sessions Case No. 1048 of 1998 vide Order No. 1 dated 25.11.1998.

2. That after creation of Metropolitan Sessions Court, Dhaka the case was transferred to Metropolitan Sessions Judge, Dhaka for holding trial vide Order No. 2. Thereafter, Metropolitan Sessions Judge transferred the case to the Additional Metropolitan Sessions Court (2nd Court), Dhaka. Here, the said court registered the case as Sessions Case No. 559 of 1999.
3. The respondent Nos. 2-4 obtained anticipatory bail from the High Court Division and thereafter, regular bail from the Court below vide order dated 30.11.1998. The case was fixed for framing of charge. The respondents filed an application on 30.11.1998 and also an additional application on 04.01.1999 under section 265C of the Code of Criminal Procedure, 1998 for discharge. The trial court rejected the said applications under 265C of the Code of Criminal Procedure, 1998 vide Order No. 39 dated 27.05.2001 without considering the submissions and materials on record.
4. That against the said rejection order the respondent Nos. 1-4 filed Criminal Revision No. 396 which was summarily rejected by a Division Bench of the Hon'ble High Court Division vide judgment and order dated 4.06.2001. Against the said judgment and order the respondent Nos. 1-4 preferred Criminal Appeal No. 47 of 2001 to the Appellate Division of Supreme Court. After second though the respondent Nos. 1-4 applied for withdrawal of the said criminal appeal which was allowed and dismissed the appeal as withdrawn vide order dated 25.07.2010.
5. Thereafter, the trial Court framed charge against the respondent Nos. 1-4 under section 24 of the Securities and Exchange Commission Ordinance, 1969 vide Order No. 46 dated 10.08.2010 without specifying the offence under section 17 of the said Ordinance.
6. Subsequently, the respondent Nos. 1-4 moved the High Court Division under section 561A of the Code of Criminal Procedure in Criminal Miscellaneous Case No. 25267 of 2010 and obtained a Rule and an order of stay. After final hearing and perusing the documents the High Court Division by the impugned judgment and order dated 16.03.2015 in Criminal Miscellaneous Case No. 25267 of 2010 (heard analogous with Criminal Miscellaneous Case No. 25315 of 2010) made the Rule absolute and quashed the proceedings of Sessions Case No. 559 of 1999 corresponding to C.R. Case No. 1080 of 1997 under section 24 of the Securities & Exchange Ordinance, 1969 of the Court of learned Additional Metropolitan Sessions Judge, 2nd Court, Dhaka.
7. That against the said judgment and order, the petitioner filed the Criminal Petition for Leave to Appeal No. 82 of 2017 wherein leave was granted vides Order dated 20.08.2017 on the following grounds—

- “I. Because the High Court Division was wrong in making the Rules absolute and thereby quashing the proceedings in view of the fact the accused-respondents went up to the Appellate Division against the rejection of their application under section 265C of the Code of Criminal Procedure and became unsuccessful all through.
 - II. Because having regard to the law declared by the Appellate Division in *Shine Pukur Holdings Limited versus Securities and Exchange Commission* reported in 50 DLR (AD) 189 and there being prima facie case of contravention of section 17 of the Securities and Exchange Ordinance, 1969 in the petition of complaint supported by the inquiry report under section 21 of the Ordinance, the High Court Division was wrong in making the Rules absolute taking into consideration the defence case at this stage.
 - III. Because having regard to the provision of section 25A of the Securities and Exchange Ordinance, 1969 placing burden of proof upon the persons prosecuted for contravention of any provision of the Ordinance, the High Court Division committed serious error of law in quashing the proceedings taking into consideration the defence case before opening and closing of prosecution evidence.”
8. That the leave was granted only on technical ground referring to the case reported in 50 DLR AD 189 without any substantive ground and without appreciating the elaborated judgment of High Court Division examining all the issues of fact along with law. Under the circumstances, this appeal is liable to be dismissed on the following reasons amongst others—

REASONS

- I. For that no where in the complaint petition it is mentioned that the respondent Nos. 1-4 for the purpose of inducing, dissuading, effecting, preventing or in any manner influencing or turning to their advantage, the sale or purchase of any security, directly or indirectly did any act which constitutes fraudulent act under section 17 of the said Ordinance. It does not specify when, how and what manner the respondent Nos. 1-4 committed any such offence. Their names have not been mentioned in the Report except the name of the company in general term. It has not even been stated whether they at all hold any share in the company or not. In fact, respondent Nos. 2-3 hold very nominal share. There is no allegation whatsoever against the respondent Nos. 2 to 3 in the Report and in the complaint-petition. It is no where stated that these persons/directors were responsible for conduct of the affairs of the company or they had any knowledge about the commission of the offence or they failed to exercise all diligence to prevent its Commission.
- II. For that section 53(1) (d) of the Companies Act, 1994 authorizes a company limited by shares to split its shares. All formalities under law have been duly performed by the respondent company before the shares were splitting. The members of the company vide Extra-Ordinary General Meeting dated on 15.01.1995 decided to split up the shares. Splitting up of shares is the absolute discretion of the shareholders of company which requires no approval by the SEC. The shares were splinted on 15.01.1995. At page 7 of the Report it is stated that during October to Mid November 1996 share prices and transactions

in share business passed through a stage of euphoria for almost the whole world including Bangladesh. That the fall of share price was markedly steep during the 2nd half of November 1996. Here the five month period of July-November, 1996 taken as reference period for conducting investigation by the enquiry committee. The splitting of shares took place before almost 1 (one) year 10 (ten) months, before the alleged incident in the share market. It was impossible for the respondents to foresee such development in the share market. There is/was/has no connection of the split of shares and the development of share market during the period of July- to November, 1996. In fact, the company has splitting the share with a view of facilitating the general shareholders to buy share within their capacity. This was so done at the request of the general shareholders. The splitting of shares, issuing right shares with or without premium, fluctuation of market price of shares above or below the investment value are all normal activities connected with listed shares all over the world as well as in Bangladesh. Splitting of share and below rate of market price than the investment value is not offence under Section 17 of the said Ordinance. These uprising of share price continued both in primary and secondary markets. After the National Election of 1996 the then Government made several public statements that they have created confidence among the investors to invest their money in the share market. In fact they took all credits for a sudden rise of prices of shares in the market. The splitting of shares which took place long before the manipulation as alleged in the Report cannot be a subject to the Report.

- III. For that no fact constituting malpractice was mentioned in the complaint petition which makes this case a case of no evidence. An offence cannot be of mal-practices were committed by them. The charge has not been framed in due compliance with Sections 221 and 222 of Code of Criminal Procedure. No fact stated in the complaint petition can even remotely be connected to the definition of fraudulent activities as enumerated in section 17 of the said Ordinance. It has not been stated which of the five clauses of section 17 has been violated. There is no criminal charge in the eye of law. The charge is based on general observation made by the Committee. Neither issuance of Right share at a premium nor splitting of share to Tk. 10.00 each is offence under section 17 of the Ordinance. And all these were done before 1996. So these do not come within the scope of the Report.
- IV. For that it is cardinal principle of a criminal case that the offence alleged in the complaint petition should be specific and well defined but in this case the complaint petition states no fact by which an offence under section 17 of the said Ordinance can be made out. The respondent Nos. 2-3 are directors of the company along with other Directors. It is nowhere stated that why only these Directors were held responsible and which conduct of them contributed in the alleged offence. Neither the complaint-petition nor the Report alleged that such offence is committed by petitioner Nos. 2-3 or with their knowledge. When no such allegation has been made against them, the instant case is not tenable against them in law.
- V. For that the complaint petition has no reference of any cognizable offence being committed by the respondents but only states that “mal-practices were resorted to in this case also” which in no manner is an offence contemplated under Section 17 of the said Ordinance.

- VI. For that in the first paragraph of the said relevant portion it is also mentioned company offered right shares 1:1 in 1994 with a premium of Tk. 1100. It appears that the premium was over calculated.” Even if this statement is admitted to be true though not conceded it is not an offence as nowhere in Section 17 of the said Ordinance is ‘over calculation’ of premium stated to be a fraudulent act.

Wherefore, it is most humbly prayed that Your Lordships would graciously be pleased to dismiss the Civil Appeal No. _____ of 2018 for ends of justice and/or pass such other or further order or orders as Your Lordships may deem fit and proper.

Drawn and filed by :

(.....)

Advocate-on-record

For the Accused-Petitioners-Respondents

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL PETITION FOR LEAVE TO APPEAL NO. _____ OF 2019.

IN THE MATTER OF:

An application under Article 103 of the Constitution of the People’s Republic of Bangladesh.

AND

IN THE MATTER OF :

1. A. K. Akter Hossain, son of Mojaffar Hossain Talukder,
2. Shahanara A. Hossain, wife of A.K. Akter Hossain,
Permanent address of both: Farida Manjil, Town School Road, Bhatikhana, Police Station- Sadar, District- Barishal, present address: Property Square, Flat No. 5/A, House No. 15/A, Lake Circus Road, Kalabagan, Police Station- Kalabagan, District- Dhaka.

Represented by their Attorney Waliur Rahman Masum, son of late Abdul Halim Sernibat, of Post and Village- Aghoiljhara, Police Station- Gournadi, district- Barishal, present address: 27/A-5, Dhakeshwari Road, Lalbagh, Dhaka-1211.

..... Defendants-Petitioners-Applicants-Petitioners.

-Versus-

Unitech Holdings and Technologies Ltd, Corporate Office: House No. 8/B, (5th Floor), Road No. 02, Gulshan-1, Police Station- Gulshan, Dhaka-1212, represented by its Managing Director S.M. Jahidul Islam.

..... Plaintiff-Opposite Party-Respondent.

AND

IN THE MATTER OF:

Order dated 10.07.2019 passed by the High Court Division in Civil Revision No. 3642 of 2018 keeping the application on behalf of the defendants- petitioners-applicants-petitioners for passing necessary direction/order restraining the plaintiff-opposite party-respondent from carrying out construction/development work in the suit property and/or to maintain status quo in respect of position thereof with record and fixing the revision on 16.07.2019 treating the case is ready for hearing.

To,

Mr. Justice Muhammad Imman Ali, the performing functions of the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That this Civil Petition for Leave to Appeal is directed against the Order dated 10.07.2019 passed by the High Court Division in Civil Revision No. 3642 of 2018 keeping the application on behalf of the defendants-petitioners-applicants-petitioners for passing necessary direction/order restraining the plaintiff-opposite party-respondent from carrying out construction/development work in the suit property and/or to maintain status quo in respect of position thereof into record and fixing the revision next week treating the case is ready for hearing.

2. That the petitioner filed this Civil Revision stating inter alia that—
- “(a) That the petitioner filed the civil revision application challenging the Order No. 4 dated 1.04.2018 passed by the learned District Judge, Dhaka in Arbitration Misc. Case No. 134 of 2018 granting ad-interim injunction restraining the defendants-petitioners from cancelling the Power of Attorney dated 6.05.2008 executed in favour of the plaintiff-opposite party and obstructing the plaintiff-opposite party from proceeding with the construction work of the apartment building.
 - (b) That the plaintiff-opposite party filed the Arbitration Misc. Case No. 138 of 2018 for appointment of arbitrator under section 12 of the Arbitration Act stating dispute with the defendants-petitioners. The plaintiff is a developer and the defendants are the land owners. They executed a contract on 6.05.2008 having registration No. 5577 and also executed a Registered Power of Attorney. At one point of time dispute arose between the parties. For settling the dispute the plaintiff filed this case for appointment of arbitrator.
 - (c) That during the pendency of the case, the plaintiff filed an application under section 7Ka of the Arbitration Act read with section 151 of the Code of Civil Procedure seeking ad-interim injunction against the defendants-petitioners restraining the defendants-petitioners from cancelling the Power of Attorney dated 6.05.2008 executed in favour of the plaintiff-opposite party and obstructing the plaintiff-opposite party from proceeding with the construction work of the apartment building.
 - (d) That during the pendency of said application the plaintiff on 29.03.2018 filed an application under section 151 of the Code of Civil Procedure which was allowed by the learned court below granting ad-interim injunction in favour of the plaintiff against the defendants vide order No. 4 dated 1.04.2018.
 - (e) That the Deed of Agreement for land development was executed on 6.05.2008 and Irrevocable General Power of Attorney was executed on the same date.
 - (f) That subsequently due to failure of the plaintiff-opposite party to start and complete the work in time the defendants-petitioners executed a registered power cancellation deed on 14.01.2013.
 - (g) That after coming into knowledge the petitioners filed an application for vacating the said order of injunction, but the same has been kept pending from date to date. The learned court below is acting so malafide without considering the fact that the petitioners are suffering tremendous financial loss and difficulty by the impugned order. They though being the real owners of the land, their rights have been seriously violating by the opposite party.
 - (h) That the learned District Judge, Dhaka passed the impugned order not going into the merit of the suit. The deed of agreement and general power of attorney were executed on 6.05.2008, subsequently the land owners i.e. the defendants-petitioners executed registered cancellation deed by cancelling the said general power of attorney on 14.01.2013; but the impugned arbitration case was filed by the plaintiff-opposite party on 1.03.2018 which is long after the said cancellation deed. As such the

arbitration case has got no merit at all and the plaintiff has got no locus standi to file the case. Thereby the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same are liable to be set aside.

- (i) That by the impugned order injunction was granted restraining the petitioners from cancelling the power of attorney dated 6.05.2018 but the same had already been cancelled on 14.09.2013 which was long before this arbitration case without filing suit for cancellation of said registered power of cancellation deed dated 14.01.2013 this suit is not maintainable. But the learned court below failed to consider this issue. Thereby the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same are liable to be set aside.
 - (j). That the learned court below failed to examine that by the impugned order the defendants-petitioners shall suffer irreparable loss and injury and the same will also cause serious inconvenience to the petitioners because the power has already been cancelled and the plaintiff-opposite party has miserably failed to start, carry out and complete the construction work within the stipulated period as mentioned in the deed of agreement and power of attorney. In fact, the plaintiff-opposite party failed to obtain permission from the RAJUK as to lay-out plan and construct building thereof. But the learned court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same are liable to be set aside.
 - (k) That before passing the impugned order the notice was not properly served upon the defendants-petitioners or upon their attorney, but the learned court below erroneously found that the notice was served but the petitioners did not turn up to the notice. In fact, when the application for injunction was pending the impugned order was passed by the learned court on the application of the plaintiff-opposite party under section 151 of the Code of Civil Procedure. As such, the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same are liable to be set aside.
 - (l) That due to the failure of the plaintiff-opposite party to perform its contractual obligation under the said land development agreement and kept the construction work pending for a period of long 10 (ten) years which has already caused tremendous financial loss to the petitioners. The plaintiff-opposite party should be barred by the principle of estoppel, waiver acquiescence and default, but the learned court below failed to ascertain that the prima facie case absolutely goes in favour of the petitioners. Thereby, the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same are liable to be set aside.”
3. That after hearing the learned Advocate for the petitioner and perusing the documents, the High Court Division was pleased to issue Rule and stay the operation of the said order for a period of 06 (Six) months vide Order dated 11.11.2018 (further extended for a period of 6

(six) months on 19.05.2019). Against the same, the plaintiff-opposite party-respondent filed Civil Petition for Leave to Appeal No. 4748 of 2018 before the Hon'ble Appellate Division. After hearing the parties and perusing the documents, the Appellate Division dismissed the said leave petition vides judgment and order dated 10.03.2019. By dint of that position, the Order of High Court Division is the prevailing one.

4. Thereafter, the defendants-petitioners-applicants filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint which is now pending for hearing on next date. That earlier on 28.10.2018 the defendants-petitioners-applicants-petitioners filed an application for restraining the plaintiff-opposite party-respondent from carrying out the construction work in suit land, but the application was not considered by the trial court below.
5. That subsequently, on 28.04.2019 after the said Order of Hon'ble Appellate Division the defendants-petitioners-applicants-petitioners filed an application for directing the plaintiff-opposite party-respondents to stop carrying out construction work and leave the suit premises vacant in favour of the defendants-petitioners-applicants-petitioners. After hearing the said application, the learned court below passed the following order—

১৮

“২১/৫/১৯ অদ্য প্রতিপক্ষের বিগত ২৮/৪/১৯ তারিখের দেয়া দরখাস্ত শুনানীর জন্য দিন ধার্য আছে। প্রতিপক্ষ হাজিরা দিয়াছে। দরখাস্তকারীপক্ষ একদরখাস্তদ্বারা বর্ণিত কারণে সময়ের প্রার্থনা করিয়াছে।

অদ্য প্রতিপক্ষের দাখিলী গত ২৮/৪/১৯ তারিখে দরখাস্ত শুনানীর জন্য দিন ধার্য আছে। দরখাস্তকারী পক্ষ এক দরখাস্ত দাখিল করে বর্ণিত কারণে সময়ের প্রার্থনা করেন।

প্রতিপক্ষের প্রার্থীত মতে নালিশী সম্পত্তির নির্মাণ কাজ কেন বন্ধ করা হবে না এবং নালিশী সম্পত্তি খালি করে প্রতিপক্ষের বরাবরে কেন হস্তান্তর করা হবে না তৎমর্মে নোটিশ প্রাপ্তির ১০ (দশ) দিনের মধ্যে দরখাস্তকারীকে কারণ দর্শানোর জন্য নির্দেশ দেওয়া হল। দরখাস্তকারী পক্ষের সময়ের দরখাস্ত মঞ্জুর করা হল।

আগামী ইং ১৮/৮/১৯ ইং তারিখ আরজী খারিজের দরখাস্ত শুনানীর জন্য দিন ধার্য করা হল।”

6. That very surprisingly on 21.05.2019 i.e. on the date of hearing of said application, the learned court issued show-cause notice of 10 (ten) days but illegally, malafide and arbitrarily fixed the date of the case is on 18.08.2019. This is how the learned trial court never passed any reasonable order which may do proper adjudication in this case. It does not only manifest the biasness of the trial court below but also show his arbitrariness and unfairness in adjudicating this case properly.
 7. That subsequently, in the pending Civil Revision the petitioners filed an application for passing necessary direction/order restraining the plaintiff-opposite party-respondent from carrying out construction/development work in the suit property and/or to maintain status quo in respect of position thereof stating inter-alia as follows—
- “(a) That the plaintiff-opposite party filed the Arbitration Misc. Case No. 134 of 2018 for appointment of an arbitrator under section 12 of the Arbitration Act, 2001. The plaintiff-opposite party is a developer and the defendants-petitioners-applicants are the land owners. They entered into an Agreement for land development on 6.05.2008 and Irrevocable General Power of Attorney on the same date. Subsequently, due to

failure of the plaintiff-opposite party to start and complete the work in time which was mentioned in the agreement, the defendants-petitioners-applicants were compelled to cancel the power of executing a registered power cancellation deed on 14.01.2013. For declaring this cancellation deed void and illegal, the plaintiff-opposite party filed Title Suit No. 417 of 2013 which was dismissed *vides* judgment and order dated 7.07.2015.

- (b) That the Registered Deed of Agreement and Registered Power of Attorney were executed on 06.05.2008. The construction period for the project was fixed for 26 (Twenty Six) months and grace period 6 (six) months, if necessary from the date of approval of RAJUK plan whichever is later. Thereafter, more than 10 (ten) years have already been passed, but the plaintiff-opposite party has very recently started the work in reluctant and lethargic way. Moreover, the construction work is far below quality, unsafe and poor than it should be for making a modern, safe and standard building. The piling work is very below standard and the work is going on totally in deviation of the agreement (more so, the agreement is not in force anymore). The plaintiff company did not pay any compensation to the defendants-petitioners-applicants, and they have not taken necessary permissions from all concerned authorities yet. Moreover, the plaintiff-opposite party caused huge loss to the defendants-petitioners-applicants. Now, the plaintiff-opposite party is showing tendency to carry out the construction only for recovering unauthorized, unfair and big benefit from the defendants-petitioners-applicants in arbitration process. The plaintiff-opposite party is doing it to abuse the situation and make position vulnerable for the defendants-petitioners-applicants. In fact, the arbitration proceeding is pending between the parties. Before adjudication of the arbitration proceeding finally, if the plaintiff-opposite party would complete the construction work totally, then it would surely render the arbitration proceeding one-sided and ineffective.
- (c) That in this Arbitration Case, earlier the plaintiff-opposite party filed an application under section 7Ka of the Arbitration Act read with section 151 of the Code of Civil Procedure seeking *ad-interim* injunction against the defendants-petitioners-applicants restraining them from cancelling the Power of Attorney dated 6.05.2008 executed in favor of the plaintiff-opposite party and from obstructing the plaintiff-opposite party from proceeding with the construction work. Thereafter, the learned court allowed the application by granting *ad-interim* injunction in favor of the plaintiff-opposite party against the defendants *vide* order No. 4 dated 1.04.2018.
- (d) That after coming into knowledge the defendants-petitioners-applicants filed an application before the learned court for vacating the said order of injunction, but the same was been kept pending from date to date.
- (e) That the defendants-petitioners-applicants challenging the said Order filed Civil Revision No. 3642 of 2018 before the Hon'ble High Court Division. The Hon'ble High Court Division issued Rule and stayed the operation of the said impugned order for a period of 06 (Six) months *vide* Order dated 11.11.2018 (further extended for a period of 6 (six) months on 19.05.2019). Against the same, the plaintiff-opposite

party filed Civil Petition for Leave to Appeal No. 4748 of 2018 before the Hon'ble Appellate Division. After hearing the parties and perusing the documents, the Appellate Division dismissed the said leave petition vides judgment and order dated 10.03.2019. By dint of that position, the Order of High Court Division is the prevailing one.

- (f) Thereafter, the defendants-petitioners-applicants filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint which is now pending for hearing on next date.
- (g) That earlier on 28.10.2018 the defendants-petitioners-applicants filed an application for restraining the plaintiff-opposite party from carrying out the construction work in suit land, but the application was not considered by the trial court below.
- (h) That subsequently, on 28.04.2019 after the said order of Hon'ble Appellate Division the defendants-petitioners-applicants filed an application for directing the plaintiff-opposite party to stop carrying out construction work and leave the suit premises vacant in favour of the defendants-petitioners-applicants. After hearing the said application, the learned court below passed the following order—

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২১/৫/১৯

অদ্য প্রতিপক্ষের বিগত ২৮/৪/১৯ তারিখের দেয়া দরখাস্ত শুনানীর জন্য দিন ধার্য আছে। প্রতিপক্ষ হাজিরা দিয়াছে। দরখাস্তকারীপক্ষ একদরখাস্তদ্বারা বর্ণিত কারণে সময়ের প্রার্থনা করিয়াছে। অদ্য প্রতিপক্ষের দাখিলী গত ২৮/৪/১৯ তারিখে দরখাস্ত শুনানীর জন্য দিন ধার্য আছে। দরখাস্তকারী পক্ষ এক দরখাস্ত দাখিল করে বর্ণিত কারণে সময়ের প্রার্থনা করেন। প্রতিপক্ষের প্রার্থীত মতে নালিশী সম্পত্তির নির্মাণ কাজ কেন বন্ধ করা হবে না এবং নালিশী সম্পত্তি খালি করে প্রতিপক্ষের বরাবরে কেন হস্তান্তর করা হবে না তৎমর্মে নোটিশ প্রাপ্তির ১০ (দশ) দিনের মধ্যে দরখাস্তকারীকে কারণ দর্শানোর জন্য নির্দেশ দেওয়া হল। দরখাস্তকারী পক্ষের সময়ের দরখাস্ত মঞ্জুর করা হল।

আগামী ইং ১৮/৮/১৯ ইং তারিখ আরজী খারিজের দরখাস্ত শুনানীর জন্য দিন ধার্য করা হল।”

- (i) That very surprisingly on 21.05.2019 i.e. on the date of hearing of said application, the learned court issued show-cause notice of 10 (ten) days but illegally, malafide and arbitrarily fixed the date of the case is on 18.08.2019. This is how the learned trial court never passed any reasonable order which may do proper adjudication in this case. It does not only manifest the biasness of the trial court below but also show his arbitrariness and unfairness in adjudicating this case properly.
- (j) That it is submitted that the trial court below miserably failed to apply its judicial mind to consider that the arbitration proceeding is pending between the parties. Before adjudication of the arbitration proceeding finally, if the plaintiff-opposite party would complete the construction work totally, then it would surely render the arbitration proceeding one-sided and ineffective, and moreover the petitioners-applicants shall suffer irreparable loss and injury which cannot be compensated in terms of money. As such, the plaintiff-opposite party is liable to be restrained from carrying out the construction work in the schedule land till disposal of the arbitration case/proceeding for ends of justice.

- (k) That it is submitted that the defendants-petitioners-applicants have been suffering irreparable loss and injury and the same will also cause serious inconvenience to the defendants-petitioners-applicants because the power has already been cancelled and the plaintiff-opposite party has miserably failed to start, carry out and complete the construction work within the stipulated period as mentioned in the deed of agreement and power of attorney. In fact, the plaintiff-opposite party failed to obtain the correct permission from the RAJUK as to lay-out plan and construct building thereof in the way as originally contracted for between the parties. As such, the plaintiff-opposite party is liable to be restrained from carrying out the construction work in the schedule land till disposal of the arbitration case/proceeding for ends of justice.
 - (l) That it is submitted that due to the failure of the plaintiff-opposite party to perform its contractual obligation under the said land development agreement and kept the construction work pending for a period of long 10 (ten) years which has already caused tremendous financial loss to the defendants-petitioners-applicants, the plaintiff-opposite party should be barred by the principle of estoppel, waiver acquiescence and default. The plaintiff-opposite party has no locus standi to stay in the suit premises. And as such, the plaintiff-opposite party has no standing to carry out the construction work in the land in question. Hence, the plaintiff-opposite party is liable to be restrained from carrying out the construction work in the schedule land till disposal of the arbitration case/proceeding for ends of justice.
 - (m) That it is submitted that under the circumstances, the plaintiff-opposite party should not be allowed to carry out the construction work in the suit land and the plaintiff-opposite party should be restrained from carrying out any construction/development work in the suit land.”
8. That it is stated that the plaintiff-opposite party-respondent contested the application by filling affidavit-in-opposition.
 9. That after hearing the learned Advocates and perusing the documents the Hon’ble Court kept the said application on record by fixing the matter immediately on 16.07.2019 treating the case is ready for hearing by order dated 10.07.2019.
 10. That it is submitted that the High Court Division very illegally and malafide passed the impugned order without considering that the developer-plaintiff-opposite party-respondent has no right to possess and carry out development work in the land in question because the Irrevocable General Power of Attorney was cancelled long ago in the year 2013 (on 14.01.2013) by the landowner-plaintiff-opposite party-respondent. After 5 (five) years of cancellation of said power, the developer-plaintiff-opposite party-respondent filed application under 7Ka and got injunction from the District Judge, Dhaka on 1.04.2018 from cancelling the said power of attorney; against the same the landowner-plaintiff-opposite party-respondent filed the Civil Revision and got stay vide Order dated 11.11.2018 from the High Court Division which was subsequently affirmed by the Appellate Division on 10.03.2019. Therefore, the developer-plaintiff-opposite party-respondent should be restrained from possessing and carrying out the development/construction work in the land

in question, but the High Court Division miserably failed to appreciate this point of law and passed the impugned order, which ultimately, contradicting his earlier order. As such, the impugned order is liable to be set aside for ends of justice.

11. That it is submitted that the High Court Division passed the impugned order which is self-contradictory with its earlier order of stay; as such the impugned order is liable to be set aside for ends of justice.
12. That it is submitted that the High Court Division miserably failed to consider that after cancellation of the said Irrevocable General Power of Attorney and after confirming the same from the High Court Division and the Appellate Division, the developer-plaintiff-opposite party-respondent shall not have any locus standi in the land in question; as such they have got no right to carry out the development/construction work in the suit land. For ready reference the earlier order of the High Court Division is quoted below—

“Records need not be called for.

Let a Rule be issued calling upon the plaintiff-opposite parties to show cause as to why the impugned order No. 04 dated 01.04.2018 passed by the learned District Judge, Dhaka in Arbitration Misc. Case No. 134 of 2018 granting ad-interim injunction restraining the defendants-petitioners from cancelling the Power of Attorney dated 6.05.2018 executed in favour of the plaintiff-opposite party and obstructing the plaintiff-opposite party from proceeding with the construction work of the apartment building should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The Rule is made returnable within 04 (four) weeks from date.

Pending hearing of the Rule, let the operation of the impugned order No. 4 dated 01.04.2018 be stayed for a period of 06 (six) months from date.

The office is directed to serve notices upon the opposite parties by usual course as well as by registered post with acknowledgment due at the cost of the petitioner.

The petitioner is directed to put in the requisite within 72 (seventy two) hours.”

As such, the impugned order is liable to be set aside for ends of justice.

13. That it is submitted that the impugned order passed by the High Court Division is arbitrary, malafide, non-speaking, surmise and conjecture in nature. As such, the impugned order is liable to be set aside for ends of justice.
14. That it is submitted that the High Court Division failed to examine that the construction works carrying out by the developer-plaintiff-opposite party-respondent is causing serious encumbering over the suit land and the same will frustrate the entire arbitration proceeding. Moreover, the developer-plaintiff-opposite party-respondent is now in collusion with the vested quarter is delaying the process of arbitration case as well as harassing the petitioner in every possible way. Almost 11 years have been passed, but still pilling work is going on and the same is of very poor and sub-standard quality. But the High Court Division failed to examine all these issues. As such, the impugned order is liable to be set aside for ends of justice.

15. That in the premises aforesaid the petitioner being aggrieved by and dissatisfied with the Order dated 10.07.2019 passed by the High Court Division in Civil Revision No. 3612 of 2018 keeping the application on behalf of the defendants-petitioners-applicants-petitioners for passing necessary direction/order restraining the plaintiff-opposite party from carrying out construction/development work in the suit property and/or to maintain status quo in respect of position thereof into record and fixing the revision next week treating the case is ready for hearing, begs to file this Civil Petition for Leave to Appeal before the Appellate Division on the following amongst others—

GROUND S

- I. For that the High Court Division very illegally and malafide passed the impugned order without considering that the developer-plaintiff-opposite party-respondent has no right to possess and carry out development work in the land in question because the Irrevocable General Power of Attorney was cancelled long ago in the year 2013 (on 14.01.2013) by the landowner-plaintiff-opposite party-respondent. After 5 (five) years of cancellation of said power, the developer-plaintiff-opposite party-respondent filed application under 7Ka and got injunction from the District Judge, Dhaka on 1.04.2018 from cancelling the said power of attorney; against the same the landowner-plaintiff-opposite party-respondent filed the Civil Revision and got stay vide Order dated 11.11.2018 from the High Court Division which was subsequently affirmed by the Appellate Division on 10.03.2019. Therefore, the developer-plaintiff-opposite party-respondent should be restrained from possessing and carrying out the development/construction work in the land in question, but the High Court Division miserably failed to appreciate this point of law and passed the impugned order, which ultimately, contradicting his earlier order. As such, the impugned order is liable to be set aside for ends of justice.
- II. For it is submitted that the High Court Division passed the impugned order which is self-contradictory with its earlier order of stay; as such the impugned order is liable to be set aside for ends of justice.
- III. For it is submitted that the High Court Division miserably failed to consider that after cancellation of the said Irrevocable General Power of Attorney and after confirming the same from the High Court Division and the Appellate Division, the developer-plaintiff-opposite party-respondent shall not have any locus standi in the land in question; as such they have got no right to carry out the development/construction work in the suit land. For ready reference the earlier order of the High Court Division is quoted below—

“Records need not be called for.

Let a Rule be issued calling upon the plaintiff-opposite parties to show cause as to why the impugned order No. 04 dated 01.04.2018 passed by the learned District Judge, Dhaka in Arbitration Misc. Case No. 134 of 2018 granting ad-interim injunction restraining the defendants-petitioners from cancelling the Power of Attorney dated 6.05.2018 executed in

favour of the plaintiff-opposite party and obstructing the plaintiff-opposite party from proceeding with the construction work of the apartment building should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The Rule is made returnable within 04 (four) weeks from date.

Pending hearing of the Rule, let the operation of the impugned order No. 4 dated 01.04.2018 be stayed for a period of 06 (six) months from date.

The office is directed to serve notices upon the opposite parties by usual course as well as by registered post with acknowledgment due at the cost of the petitioner.

The petitioner is directed to put in the requisite within 72 (seventy two) hours.”

As such, the impugned order is liable to be set aside for ends of justice.

- IV. For that the impugned order passed by the High Court Division is arbitrary, malafide, non-speaking, surmise and conjecture in nature. As such, the impugned order is liable to be set aside for ends of justice.
- V. For that the High Court Division failed to examine that the construction works carrying out by the developer-plaintiff-opposite party-respondent is causing serious encumbering over the suit land and the same will frustrate the entire arbitration proceeding. Moreover, the developer-plaintiff-opposite party-respondent is now in collusion with the vested quarter is delaying the process of arbitration case as well as harassing the petitioner in every possible way. Almost 11 years have been passed, but still pilling work is going on and the same is of very poor and sub-standard quality. But the High Court Division failed to examine all these issues. As such, the impugned order is liable to be set aside for ends of justice.

WHEREFORE, it is most humbly prayed that this Hon’ble Court would graciously be pleased to grant leave to appeal and /or to pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Drawn and filed by :

.....
 Advocate-on-record
 For the Petitioner

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL PETITION FOR LEAVE TO APPEAL NO. _____ OF 2019.

IN THE MATTER OF:

An application for direction upon the developer-plaintiff-opposite party-respondent to maintain status quo in respect of suit land.

AND

IN THE MATTER OF :

A. K. Akter Hossain and another.

..... **Petitioners**

–VERSUS–

Unitech Holdings and Technologies Ltd

..... **Respondent.**

To

Mr. Justice Muhammad Imman Ali, the performing functions of the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioners most respectfully—

S H E W E T H :

1. That this Civil Petition for Leave to Appeal is directed against the Order dated 10.07.2019 passed by the High Court Division in Civil Revision No. 3642 of 2018 keeping the application on behalf of the defendants-petitioners-applicants-petitioners for passing necessary direction/order restraining the plaintiff-opposite party-respondent from carrying out construction/development work in the suit property and/or to maintain status quo in respect of position thereof into record and fixing the revision next week treating the case is ready for hearing.
2. That the petitioner filed the civil revision application challenging the Order No. 4 dated 1.04.2018 passed by the learned District Judge, Dhaka in Arbitration Misc. Case No. 134 of 2018 granting ad-interim injunction restraining the defendants-petitioners from cancelling the Power of Attorney dated 6.05.2008 executed in favour of the plaintiff-opposite party and obstructing the plaintiff-opposite party from proceeding with the construction work of the apartment building.

3. That after hearing the learned Advocate for the petitioner and perusing the documents, the High Court Division was pleased to issue Rule and stay the operation of the said order for a period of 06 (Six) months vide Order dated 11.11.2018 (further extended for a period of 6 (six) months on 19.05.2019). Against the same, the plaintiff-opposite party-respondent filed Civil Petition for Leave to Appeal No. 4748 of 2018 before the Hon'ble Appellate Division. After hearing the parties and perusing the documents, the Appellate Division dismissed the said leave petition vides judgment and order dated 10.03.2019. By dint of that position, the Order of High Court Division is the prevailing one.
4. Thereafter, the defendants-petitioners-applicants filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint which is now pending for hearing on next date. That earlier on 28.10.2018 the defendants-petitioners-applicants-petitioners filed an application for restraining the plaintiff-opposite party-respondent from carrying out the construction work in suit land, but the application was not considered by the trial court below.
5. That subsequently, on 28.04.2019 after the said Order of Hon'ble Appellate Division the defendants-petitioners-applicants-petitioners filed an application for directing the plaintiff-opposite party-respondents to stop carrying out construction work and leave the suit premises vacant in favour of the defendants-petitioners-applicants-petitioners. After hearing the said application, the learned court below passed the following order—

১৮
২১/৫/১৯ অদ্য প্রতিপক্ষের বিগত ২৮/৪/১৯ তারিখের দেয়া দরখাস্ত শুনানীর জন্য দিন ধার্য আছে। প্রতিপক্ষ হাজিরা দিয়াছে। দরখাস্তকারীপক্ষ একদরখাস্তদ্বারা বর্ণিত কারণে সময়ের প্রার্থনা করিয়াছে।

অদ্য প্রতিপক্ষের দাখিলী গত ২৮/৪/১৯ তারিখে দরখাস্ত শুনানীর জন্য দিন ধার্য আছে। দরখাস্তকারী পক্ষ এক দরখাস্ত দাখিল করে বর্ণিত কারণে সময়ের প্রার্থনা করেন।

প্রতিপক্ষের প্রার্থিত মতে নালিশী সম্পত্তির নির্মাণ কাজ কেন বন্ধ করা হবে না এবং নালিশী সম্পত্তি খালি করে প্রতিপক্ষের বরাবরে কেন হস্তান্তর করা হবে না তৎমর্মে নোটিশ প্রাপ্তির ১০ (দশ) দিনের মধ্যে দরখাস্তকারীকে কারণ দর্শানোর জন্য নির্দেশ দেওয়া হল। দরখাস্তকারী পক্ষের সময়ের দরখাস্ত মঞ্জুর করা হল।

আগামী ইং ১৮/৮/১৯ ইং তারিখ আরজী খারিজের দরখাস্ত শুনানীর জন্য দিন ধার্য করা হল”

6. That very surprisingly on 21.05.2019 i.e. on the date of hearing of said application, the learned court issued show-cause notice of 10 (ten) days but illegally, malafide and arbitrarily fixed the date of the case is on 18.08.2019. This is how the learned trial court never passed any reasonable order which may do proper adjudication in this case. It does not only manifest the biasness of the trial court below but also show his arbitrariness and unfairness in adjudicating this case properly.
7. That subsequently, in the pending Civil Revision the petitioners filed an application for passing necessary direction/order restraining the plaintiff-opposite party-respondent from carrying out construction/development work in the suit property and/or to maintain status quo in respect of position thereof. That it is stated that the plaintiff-opposite party-respondent contested the application by filling affidavit-in-opposition.

8. That after hearing the learned Advocates and perusing the documents the Hon'ble Court kept the said application on record by fixing the matter immediately on 16.07.2019 treating the case is ready for hearing by order dated 10.07.2019.
9. That it is submitted that the High Court Division very illegally and malafide passed the impugned order without considering that the developer-plaintiff-opposite party-respondent has no right to possess and carry out development work in the land in question because the Irrevocable General Power of Attorney was cancelled long ago in the year 2013 (on 14.01.2013) by the landowner-plaintiff-opposite party-respondent. After 5 (five) years of cancellation of said power, the developer-plaintiff-opposite party-respondent filed application under 7Ka and got injunction from the District Judge, Dhaka on 1.04.2018 from cancelling the said power of attorney; against the same the landowner-plaintiff-opposite party-respondent filed the Civil Revision and got stay vide Order dated 11.11.2018 from the High Court Division which was subsequently affirmed by the Appellate Division on 10.03.2019. Therefore, the developer-plaintiff-opposite party-respondent should be restrained from possessing and carrying out the development/construction work in the land in question, but the High Court Division miserably failed to appreciate this point of law and passed the impugned order, which ultimately, contradicting his earlier order. As such, the plaintiff-opposite party-respondent is liable to be restrained from carrying out the construction work in the schedule land till disposal of the arbitration case/proceeding for ends of justice.
10. That it is submitted that the High Court Division passed the impugned order which is self-contradictory with its earlier order of stay; as such, the plaintiff-opposite party-respondent is liable to be restrained from carrying out the construction work in the schedule land till disposal of the arbitration case/proceeding for ends of justice.
11. That it is submitted that the High Court Division miserably failed to consider that after cancellation of the said Irrevocable General Power of Attorney and after confirming the same from the High Court Division and the Appellate Division, the developer-plaintiff-opposite party-respondent shall not have any locus standi in the land in question; as such they have got no right to carry out the development/construction work in the suit land. For ready reference the earlier order of the High Court Division is quoted below—

“Records need not be called for.

Let a Rule be issued calling upon the plaintiff-opposite parties to show cause as to why the impugned order No. 04 dated 01.04.2018 passed by the learned District Judge, Dhaka in Arbitration Misc. Case No. 134 of 2018 granting ad-interim injunction restraining the defendants-petitioners from cancelling the Power of Attorney dated 6.05.2018 executed in favour of the plaintiff-opposite party and obstructing the plaintiff-opposite party from proceeding with the construction work of the apartment building should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The Rule is made returnable within 04 (four) weeks from date.

Pending hearing of the Rule, let the operation of the impugned order No. 4 dated 01.04.2018 be stayed for a period of 06 (six) months from date.

The office is directed to serve notices upon the opposite parties by usual course as well as by registered post with acknowledgment due at the cost of the petitioner.

The petitioner is directed to put in the requisite within 72 (seventy two) hours.”

As such, the plaintiff-opposite party-respondent is liable to be restrained from carrying out the construction work in the schedule land till disposal of the arbitration case/proceeding for ends of justice.

12. That it is submitted that the impugned order passed by the High Court Division is arbitrary, malafide, non-speaking, surmise and conjecture in nature. As such, the plaintiff-opposite party-respondent is liable to be restrained from carrying out the construction work in the schedule land till disposal of the arbitration case/proceeding for ends of justice.
13. That it is submitted that the High Court Division failed to examine that the construction works carrying out by the developer-plaintiff-opposite party-respondent is causing serious encumbering over the suit land and the same will frustrate the entire arbitration proceeding. Moreover, the developer-plaintiff-opposite party-respondent is now in collusion with the vested quarter is delaying the process of arbitration case as well as harassing the petitioner in every possible way. Almost 11 years have been passed, but still pilling work is going on and the same is of very poor and sub-standard quality. But the High Court Division failed to examine all these issues. As such, the plaintiff-opposite party-respondent is liable to be restrained from carrying out the construction work in the schedule land till disposal of the arbitration case/proceeding for ends of justice.

WHEREFORE, it is most humbly prayed that this Hon’ble Court would graciously be pleased to pass necessary direction/order restraining the plaintiff-opposite party from carrying out construction/development work in the suit property and/or to maintain status quo in respect of position thereof till disposal of the instant leave petition and /or to pass such other or further order or orders as to this Hon’ble Court may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Drawn and filed by :

Advocate-on-record
For the Petitioners

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL REVIEW PETITION NO. 283 OF 2016.

(Arising out of Civil Appeal No. 115 of 2007)

IN THE MATTER OF:

An application for accepting the additional paper book on behalf of the plaintiff-appellant-petitioner.

AND

IN THE MATTER OF :

Mossammat Kulsum Begum

.....**Plaintiff-Appellant-Petitioner.**

–*Versus* –

1. Abdul Barek Howlader being dead his heirs:

1(a). Md. Noor Mohammad Howlader being dead his heirs:

1(b). Most. Rahima Begum and others.

.....**Defendant Nos. 1, 4, 25-34-Respondent-
Opposite Parties-Respondents.**

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Hon'ble companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That this application for accepting additional paper book has been filed for producing some important facts and documents on behalf of the petitioner which are necessary for proper adjudication of the instant leave petition.
2. That it is stated that one of the respondents namely Md. Altaf Hossain, son of late Abdus Samad Hawlader made a prayer before the Deputy Commissioner, Pirojpur on 21.09.2006 for death certificate of late Kulsum Bibi. Upon that letter the office of the Deputy Commissioner passed an order on 18.10.2006. Thereafter, the Chairman of 8 No. Amragachia Union Parishad, Mathbaria, Pirojpur provided death certificate of said Kulsum Bibi confirming her date of death on 25.10.1962 (death certificate No. 113/2007). Copies of letter dated 21.09.2006, order dated 18.10.2006 and death certificate (lastly collected on 29.05.2017) are annexed hereto and marked as **Annexure- "X", "X-1" and "X-2".**

3. That for partition of the entire land except the suit land in this case there is a Title Suit No. 74 of 2005 pending amongst all the successors of late Kulsum Bibi before the learned Mathbaria Senior Assistant Judge, Pirojpur. In that suit, the instant respondents are also the defendants and the respondents submitted written statement there admitted the death of Kulsum Bibi as on 25.10.1962 in the tune “কুলসুম বিবি তার জীবমানে তার অংশের ভূমির মধ্যে আর,এস ১১৫,৪২,৬৩,২৩০,২৬২ নং খতিয়ানের তথা এস,এ ১১৫,৬৭,৭৩,৭৬,৭৭ নং খতিয়ানের ভূমি পুত্র ইয়াকুব আলী ও পুত্রের পুত্র অত্র ৪৫ নং বিবাদীদের মৌখিক দান করিয়া ভূমির দখল বুঝাইয়া দিয়া সম্পূর্ণ নিষত্ববান অবস্থায় ২৫/১০/৬২ তারিখে মৃত্যু বরণ করেন।” Copies of plaint and written statement of Title Suit no. 74 of 2005 is annexed hereto and marked as **Annexure- “X-3” and “X-4”**.
4. That it is stated that the Partition Deed dated 4.01.1958 as relied upon by the respondents is not a Partition Deed in fact. It is an Ekranama. Moreover, in the said Ekranama entire properties of late Kulsum Bibi were included but this deed was executed long before the death of Kulsum Bibi which is quite doubtful. Copy of the Ekranama dated 4.01.1958 is annexed hereto and marked as **Annexure- “X-5”**.
5. That later on Hazi Abdul Barek (one of the claimant under said Ekranama) transferred some portion of his land to his son Motiar Rahman vides Registered Heba Deed No. 5910 dated 20.05.1982 wherein the said “Ekranama” was addressed as “Wasiatnama” executed by said Kulsum Bibi. Therefore, all these issues carry out the prima facie evident that there was not wasiatnama at all, and the stories made by the respondents are altogether false, frivolous and fake. Copy of the Deed No. 5910 is annexed hereto and marked as **Annexure- “X-6”**.
6. That it is pertinent to mention that even some of the successors of the holders under the said Ekranama also sold some portions of land of late Kulsum Bibi claiming themselves as her successors but not under the alleged wasiatnama. For ready reference one sale deed being No. 4681 dated 16.07.2012 is annexed hereto and marked as **Annexure- “X-7”**.

WHEREFORE, it is most humbly prayed that this Hon’ble Court would graciously be pleased to accept this additional paper book ends of justice and /or to pass such other or further order or orders as to this Hon’ble Court may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Drawn and filed by :

Advocate-on-record
For the petitioner.

Sample

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)

CIVIL PETITION FOR LEAVE TO APPEAL NO. 352 OF 2020
(Arising out of Civil Miscellaneous Petition No. 50 of 2020)

IN THE MATTER OF

An application for vacating the order of stay dated 20.01.2020 passed by the Hon'ble Judge-in-Chamber of the Appellate Division in Civil Petition for Leave to Appeal No. 352 of 2020 arising out of Civil Miscellaneous Petition No. 50 of 2020.

AND

IN THE MATTER OF:

Shorecap Holding Limited and another.

..... **Petitioners.**

-VERSUS-

Shore Cap Holdings Limited and others.

..... **Respondents.**

AND

IN THE MATTER OF

Shore Cap Holdings Limited, a private limited company, incorporation No. C-84688 dated 13.05.2010, Address: BSEC Bhaban, Level-4, 102 Kazi Nazrul Islam Avenue, Kawran Bazar, Dhaka-1215, and Lotus Kamal Tower-2, Plot – 59, 61, Level-11, Gulshan Avenue, Gulshan-1, Dhaka-1212, represented by its Company Secretary Mohammad Mazaharul Islam.

..... **Respondent No. 1-Applicant.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition of the applicant above-named most respectfully—

S H E W E T H :

1. That this is an application for vacating the order of stay dated 20.01.2020 passed by the Hon'ble Judge-in-Chamber of the Appellate Division in Civil Petition for Leave to Appeal No. 352 of 2020 arising out of Civil Miscellaneous Petition No. 50 of 2020.
2. That the applicant as writ petitioner filed the writ petition stating as follows :

- “a. That the petitioner company namely Shore Cap Holdings Limited, a private limited company, incorporation No. C-84688 dated 13.05.2010, Address: BSEC Bhaban, Level-4, 102 Kazi Nazrul Islam Avenue, Kawran Bazar, Dhaka, and Lotus Kamal Tower-2, Plot – 59, 61, Gulshan Avenue, Gulshan-1, Dhaka-1212. It is incorporated with two shareholders-directors namely Mohammad Lutfar Rahman and Shoma Alam Rahman who are still the Managing Director and Director in the Company.
- b. That in the year 2015 when the respondent No. 6 company S.S. Steel Ltd (earlier name was S.S. Steel Pvt. Ltd) (*henceforth referred to as the 'issuer company'*) was taking preparation for coming out into share market, then the petitioner company purchased 99,91,000 (Ninety Nine Lac and Ninety One Thousand) shares (*henceforth referred to as the 'said shares'*) by paying Tk. 9,99,00,000/- (Taka Nine Crore Ninety Nine Lac) only from the respondent No. 6 company in a private placement. The payment was made in cheques and through banking channel in the following manner—

SL	Cheque No.	Date	Bank	Amount	Favoring	Clearing Date
1	2468051	04.06.2015	ICB Islamic Bank Ltd.	1,00,00,000/-	S.S Steel Pvt. Ltd.	24.06.2015
2	2468055	01.07.2015	ICB Islamic Bank Ltd.	1,30,00,000/-	S.S Steel Pvt. Ltd.	05.07.2015
3	2468056	13.07.2015	ICB Islamic Bank Ltd.	2,70,00,000/-	S.S Steel Pvt. Ltd.	14.07.2015
			Total Payment Tk.	9,99,00,000/-		

- c. That the respondent No. 9 on behalf of the respondent No. 6 acknowledged the receipt of said money and also confirmed the total number of shares to be transferred in the petitioner company vides letter dated 18.06.2015.
- d. That in the Schedule X of the respondent No. 6 company for the year 2017 (made upto 15.10.2017), the name of the petitioner was correctly shown as its shareholder holding 99,91,000 (Ninety Nine Lac and Ninety One Thousand) shares.
- e. That very surprisingly the respondent No. 6 company submitted its schedule X up-to-date till 31.12.2018 showing the name of the petitioner as “Shorecap Holding Limited” but keeping the address of the petitioner and numbers of shares intact as

“Level 11, Plot- 59, 61, Gulshan Avenue, Gulshan-1, Dhaka” and “9991000”, respectively. When the petitioner verbally informed this matter to the respondent No. 6, its management especially the respondent Nos. 9-11 replied that it was a simple typing mistake.

- f. That during the period of 2016-2018 the verbal communications between the management of the petitioner company and the respondent No. 6, especially the respondent Nos. 9-11 were going on regarding the transfer of shares in BO Account of the petitioner bearing ID No. 1202700045363804, Brokerage House- Latif Securities Limited. During this whole period, the respondent Nos. 6 and 9-11 assured that before the shares gets free/unlocked from the Central Depository Bangladesh Limited (CDBL), they will transfer the shares and make those available in the said BO account of the petitioner. But two years were passed, and the respondent Nos. 6 and 9-11 were practising dilly-dally. On that occasion, the petitioner by letter dated 10.10.2019 requested the respondent No. 6 to transfer the shares.
- g. That when the said requests met with no result, then the petitioner informed this matter to the respondent Nos. 2-5 vides letter dated 12.11.2019 stating all the details.
- h. That on 25.11.2019 the CDBL informed the respondent No. 2 about the BO Account of Shorecap Holding Limited (the respondent No. 7) giving false impression that the respondent No. 7 is the petitioner and its BO ID is 1202550066930424, BO Account Name: Shorecap Holding Limited, Address: ABC House (10th Floor), Kamal Atarturk Avenue, Dhaka-1212, DP Name: Sheltech Brokerage Limited, Setup date: 1.11.2018.
- i. That upon the letter of the petitioner, the BSEC vides letter dated 2.12.2019 directed the respondent No. 6 to correct the BO Account and credit the shares in accordance with the vetted prospectus and relevant document of RJSC along with relevant papers and documents.
- j. That in response to the same, the respondent No. 6 under the signature of the respondent No. 10 vide letters dated 22.12.2019 very fraudulently and malafide confirmed the CDBL and the BSEC about the BO Account No. 1202550066003217 belonging to the respondent No. 7 hiding the true fact that the original BO Account No. 1202700045363804 belonging to the petitioner.
- k. That after coming into knowledge about the said BO Account ID of the respondent No. 7, the petitioner collected information that this BO ID belongs to the respondent No. 7 who is incorporated as a private limited company with the RJSC in the name and style “Shorecap Holding Ltd” having incorporation No. C-152789 dated 25.06.2019, Address: the Pearl Trade Center, Cha-90/3, Pragati Sarani North Badda, Dhaka-1212. There are two shareholders-members in this company, one is Hasna Opgenhaffen (Managing Director), relative of the respondent No. 9 and the other is Sadat Rahman.

1. That it is pertinent to mention that in the prospectus (issue date: 3.10.2018, opened for public subscription: 28.10.2018 and closing date: 7.11.2019), the name of the shareholders were included wherein fraudulently the name was mentioned as “Shorecap Holding Limited” who is the respondent No. 7 though it was not incorporated at that time, but address was used of the petitioner as “Lotus Kamal Tower- 2, Plot- 59, 61, Gulshan Avenue, Gulshan-1, Dhaka-1212, Dhaka, Bangladesh”. It shows the long term plan of the respondent No. 6 in connivance with the other respondents to steal the shares of the petitioner. The petitioner purchased the shares in private placement directly from the Company in the year 2015, but the respondent No. 6 transferred the same in the name of the respondent No. 7 in the year 2019 when share became ripe up for publicly trading. This is absolutely illegal, malafide, fraudulent and downright falsehood.
- m. That the petitioner informed this matter time to time to the respondent Nos. 2-5 who either failed to perform their duties to prevent unfair, fraudulent and fictitious practice from the market or they acted in connivance with the respondents Nos. 6-13 and others. They should be answerable before this Hon’ble Court.
- n. That it is stated that right now the shares in question being 99,91,000 shares are lying with the BO Account No. 1202550066930424, Broker House: Sheltech Brokerage Limited belonging to the respondent No. 7, and because of regulation regarding private placement shares and other obligations under the prospectus in accordance with the regulations of the BSEC the shares are now kept as “locked” which will be set free/unlocked for public trading from 17.01.2020. The issuer respondent No. 6 started trading its shares publicly in capital market on 17.01.2019. Now after one year, all its lot shares will set free/unlocked by the respondent Nos. 2-6 for trading in capital market. The respondent Nos. 2-3 very illegally, arbitrarily and without proper verification transferred the shares in question from the BO Account of the issuer company (respondent No. 6) to the BO Account of the respondent No. 7 company.
- o. That it is submitted that the respondent Nos. 2-3 vehemently failed to carry out its statutory duty to transfer/credit the shares in the correct and proper BO Account of the petitioner and thereby acted in connivance with the respondent Nos. 6-13 to credit the said shares in a different account. As such, the impugned action of the respondent Nos. 2-3 shall liable to be declared to have been done without lawful authority and is of no legal effect.”
3. That after hearing the learned Advocate of the respondent No. 1-applicant, the High Court Division was pleased to issue Rule and grant injunction vides Order dated 15.12.2020 for a period of 6 (six) months; against which the petitioners filed the Civil Miscellaneous Petition No. 50 of 2020 and obtained stay from the Hon’ble Judge-in-Chamber vide Order dated 20.01.2020. The fact remains, the respondent No. 1-applicant duly instructed his learned Advocate-on-Record to file caveat and he submitted that Caveat on the same date. It was signed by the Super on the same date. Even after filing the caveat, the learned Advocate of the respondent No. 1-applicant was not notified about the filing and moving of the CMP by the petitioners. This is a collusive and corrupted practice; against which the

respondent No. 1-applicant through its learned Advocate-on-Record submitted written complain before the Hon'ble Chief Justice of the Bangladesh and also before the Registrar of the Appellate Division, Supreme Court of Bangladesh. Due to the collusive practice of the petitioners, the respondent No. 1-applicant is suffering irreparable loss and injury which may not be compensated in terms of money. However, subsequently, when the leave petitioners communicated the Order of Stay of Hon'ble Judge-in-Chamber to the other respondents, only then the respondent no. 1-applicant got to know about the issue of missing caveat. After taking information from the concerned Section through learned Advocate-on-Record, it was found that the caveat was shown entered on 30.01.2020, which left the respondent no. 1-applicant with complete surprise. As such, the Order of Stay passed by the Hon'ble Judge-in-Chamber may kindly be vacated for ends of justice.

4. That it is submitted that the respondent Nos. 3, 4 and 13 vehemently failed to carry out its statutory duty to transfer/credit the shares in the correct and proper BO Account of the respondent No. 1-applicant and thereby acted in connivance with the respondent Nos. 5-13 to credit the said shares in a different account. Under the Securities and Exchange Commission Ordinance, 1969, Depository User Regulations, CDBL By-Laws and other relevant laws, the BSEC and the CDBL are under statutory obligation to prevent fraudulent practice, forgery, misappropriation, stealing and other malpractices from the capital market; but in the present case even after bringing a fraudulent activity regarding shares to the notice of the BSEC, the CDBL and RJSC which would affect the entire capital market bitterly, the governing authorities i.e. the BSEC and the CDBL have failed to perform their statutory duties in accordance with law. As such, the Order of Stay passed by the Hon'ble Judge-in-Chamber may kindly be vacated for ends of justice.
5. That it is submitted that the fact of fraudulent and collusive practice of the petitioners is quite unique in nature which could create serious turmoil in the capital market, but the respondent No. 1-applicant could bring this matter to the Court before such chaos and turmoil in the share market could happen. The Bangladesh Securities and Exchange Commission (BSEC) and the Central Depository of Bangladesh Limited (CDBL) were under the responsibility to prevent the malpractice, syndicated crime and fraud from the market. As such, the Order of Stay passed by the Hon'ble Judge-in-Chamber may kindly be vacated for ends of justice.
6. That it is submitted that the activity of the respondent No. 13 registering the petitioner No. 1 company in the name and style "Shorecap Holding Ltd" in the year 2019 in the similar name of the respondent No. 1-applicant company "Shore Cap Holdings Ltd" who was incorporated in the year 2010 is *prima-facie* malafide, fraudulent, arbitrary and a white color crime. It signifies the proof of illegal concerned practice amongst the petitioners along with the respondent Nos. 7-13. The respondent Nos. 3-4 being the supervisory authorities in the stock market vehemently failed to prevent such malafide and illegal concerted practice. Moreso, the respondent Nos. 3, 4 and 13 miserably failed to act in co-operation with each other and also in accordance with law to carry out their duties. As such, the Order of Stay passed by the Hon'ble Judge-in-Chamber may kindly be vacated for ends of justice.

WHEREFORE, it is humbly prayed that this Hon'ble Court would graciously be pleased to vacate the Order of Stay dated 20.01.2020 passed by the Hon'ble Judge-in-Chamber of the Appellate Division in Civil Petition for Leave to Appeal No. 352 of 2020 arising out of Civil Miscellaneous Petition No. 50 of 2020 for ends of justice and/or pass such other or further order or orders as may deem fit and proper.

And for this act of kindness, the applicant, as in duty bound, shall ever pray.

Drawn & filed by:

(.....)

Advocate-on-Record

For the respondent No. 1-applicant.

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL MISCELLANEOUS PETITION NO. _____ OF 2018.

(Arising out of Arbitration Application No. 37 of 2016)

IN THE MATTER OF:

An application under Article 103 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

Bangladesh Telecommunications Company Limited (BTCL), represented by its Managing Director, of Telejogajog Bhaban, 37/E, Eskaton Garden, Dhaka-1000.

----- **Petitioner.**

(Petitioner in the Arbitration Application)

–VERSUS–

1. The Arbitral Tribunal, represented by its Chairman, Address: Judicial Service Commission, Secretariat (JATI Building), Arbitration Centre, Room No. 805, 15 College Road, Dhaka.
2. Metro Plus Limited, a private company limited by shares incorporated in United Kingdom, Address: 04 Wortley Road, London, England E6 IAY (previously 271a Whitechapel Road, 2nd Floor, Room-G, London E1 IBY, UK).

..... **Respondents.**

(Respondents in the Arbitration Application)

AND

IN THE MATTER OF:

Judgment and Order dated 25.03.2018 and 27.03.2018 passed by the High Court Division in Arbitration Application No. 37 of 2016 rejecting the application filed by the petitioner under section 20(1) & (2) (ka) & (ga) of the Arbitration Act, 2001.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Hon'ble Justices of the Hon'ble Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That this Civil Miscellaneous Petition has arisen out of the impugned Judgment and Order dated 25.03.2018 and 27.03.2018 passed by the High Court Division in Arbitration Application No. 37 of 2016 rejecting the application filed by the petitioner under section 20(1) & (2) (ka) & (ga) of the Arbitration Act, 2001.
2. That the petitioner filed the Arbitration Application before the High Court Division contending *inter-alia* the following amongst others that—
 - (A) That the petitioner is a 100% state owned public limited company carrying out telecommunication business established under Telecommunication Policy of Bangladesh and Bangladesh Telegraph and Telephone Board (Amendment) Act, 2009.
 - (B) That the petitioner and the respondent No. 1 entered into an International Telecommunications Services Operating Agreement on 26.01.2012 for providing international call termination service into Bangladesh.

- (C) That at the time of entering into the aforesaid agreement the international call termination rate was 0.0345 USD per minute and the same is subjected to change according to the directives of Bangladesh Telecommunication Regulatory Authority (BTRC) under clause 1.2.2 of Annexure- I of the agreement. Subsequently, the call termination rate was reduced to 0.015 USD per minute by the BTRC for temporary period & experimental basis (অস্থায়ী ও পরীক্ষামূলক) which was accepted by all the carriers including the respondent No. 2 who all provided services at the reduced rate. No objection was ever been raised by the respondent No. 2 before or at the time of enhancement or reduction of said call termination rate earlier. But with an utter surprise when on 24.11.2015 the BTCL under the directives of BTRC dated 24.08.2015, 22.09.2015 and directives dated 18.08.2015 of the Government informed all the carriers about the enhancement of call termination rate from 0.015 USD to 0.020 USD per minute, then only the 10 (ten) carriers of BTCL out of other more than 80 carriers of BTCL and other operators invoked the arbitration clause of their agreements though the change of call rate is outside the scope of agreement and it is absolutely under the jurisdiction of the BTRC and the Government. The BTRC is not a party to the aforesaid agreements while the determination of call termination rate is absolutely falling under the jurisdiction of the BTRC and the Government. Here, the BTCL is nothing more but a domestic implementing body of the directives of the BTRC like other companies such as Digicon Telecommunication Limited, Roots Telecom Company and others who are providing International Call Services through more than 80 carriers currently in Bangladesh. Therefore, the determination of call termination rate is not the subject matter of the agreement executed between the BTCL and the international carriers.
- (D) That, meanwhile in 2014, the respondent No. 2 filed statement of claim before the respondent No. 1 invoking arbitration proceeding for direction upon the BTCL, amongst others, to give connection of 1 X STM-1 to it as per agreement and also for declarations and compensation. Subsequently, the respondent No. 2 amended the statement of the claim.
- (E) That in the arbitration matter, the respondent No. 2 also forwarded an application for injunction, which was allowed by the arbitration tribunal who was pleased to restrain the petitioner by an order of injunction from acting upon the new rate pursuant to letter under Memo No. ITS. 01-91/2010/187 dated 24.11.2015 (Annexure- 'B-4' of this application) till the disposal of the arbitral proceeding vide Order No. 27 dated 14.01.2016.
- (F) That the respondent No. 2 filed an application for vacating the aforesaid order of injunction, which was not allowed by the respondent No. 1.
- (G) That there are 9 (nine) other carriers of the petitioner who filed application under section 7 Ka of the Arbitration Act, 2001 before the Hon'ble High Court Division and obtained injunction against the said enhancement of international call termination rate from 0.015 USD to 0.020 USD. Against the same, the BTCL and IOF (IGW Operators Forum) filed total 18 (eighteen) civil petitions before the Hon'ble

Appellate Division. After hearing the parties and perusing the documents, the Hon'ble Appellate Division disposed off those civil petitions by setting aside the orders of injunction passed by the Hon'ble High Court Division. Few of them also filed writ petitions challenging the same letter enhancing call rate before the Hon'ble High Court Division and obtained Rule and Stay, which was also subsequently stayed by the Hon'ble Appellate Division. The nature, terms and conditions of the agreements of the aforesaid carriers and the respondent No. 2 are same.

- (H) That in the CPLA Nos. 1297-1300 of 2016 arising out of Arbitration Matter Nos. 22, 23, 25 and 26 of 2015 the Hon'ble Appellate Division provided elaborate judgment with findings that the agreements between the parties have already expired and the international call termination rate was enhanced under the directives of BTRC which is not a subject matter of the agreement.
- (I) That the observations of the Hon'ble Appellate Division in the aforesaid civil petitions regarding the agreement between the parties and the enhancement of call rate is also binding upon the respondent No. 4 because of the similar nature of the agreements but the learned arbitral tribunal failed to abide by the ratios settled by the Hon'ble Appellate Division.
- (J) That it is stated that after enhancement of the call termination rate from 0.015 USD to 0.020 USD per minute, the State Minister for Post and Telecommunication Tarana Halim said to the medias that it was done under the decision of the BTRC. Quoting a report from one news portal BdNews24.com on 9.04.2015 the Minister said "the BTRC had approved the hike in international call rates from 1.5 cents (\$0.015) to 2 cents (\$0.02) for International Gateway (IGW) operators". Therefore, the enhancement of call termination rate from 0.015 USD to 0.020 USD per minute is absolutely a government policy. All the carriers are bound to accept it. So, the enhancement of the international call termination rate is not at all the subject matter of the aforesaid agreement executed between the petitioner and the respondent No. 2; moreover the period of the agreement has already been expired.
- (K) That in view of the above, it is now settled that the agreement of the parties have already been expired and the enhancement of the international call termination rate is not the subject matter of the aforesaid agreement. But the respondent No. 1-learned Arbitral Tribunal has failed to consider these points of law and very illegally and arbitrarily entertained the arbitration application of the respondent No. 2, formed the arbitral tribunal and passed the impugned order of injunction in favour of the respondent No. 2, which is not sustainable in the eye of law, and as such the same is liable to be set aside for ends of justice.
- (L) That the arbitral tribunal was constituted in April 2014 and the impugned order of injunction was passed on 14.01.2016. Since November 2015 to till date, the aforesaid 9 (nine) companies filed one after another arbitration applications and writ petitions in different manner; against which the petitioner filed 12 (twelve) Civil Petitions of Leave to Appeal before the Hon'ble Appellate Division time to time. It took considerable length of time and attention to get the final result from the Hon'ble

Appellate Division. Some other matters i.e. arbitration applications under section 12 of the Arbitration Act filed by 9 (nine) companies and the 5 (five) applications under section 7Ka of the said Act (though ad-interim orders of injunction are stayed by the Hon'ble Appellate Division) are still pending before the Hon'ble High Court Division and the petitioner is contesting those matters. Under the scenario, the petitioner prayed for vacating the order of injunction to the respondent No. 1 by filing an application since there is no alternative forum to this, but the respondent No. 1 filed to consider that vacating application of the petitioner. Therefore, finding no alternative way the petitioner is invoking jurisdiction under section 20 of the Arbitration Act, 2001 before this Hon'ble Court. As such, the petitioner is prompt in making instant application within the meaning of section 20 (1)(Kha) of the Arbitration Act.

- (M) That it is submitted that this application for the determination by this Hon'ble Court on the question of jurisdiction of the respondent No. 1 of the dispute regarding enhancement of call rate which is not the subject matter of the agreement is absolutely falling within the meaning of section 20(1) of the Arbitration Act.
- (N) That it is submitted that the impugned order of injunction is creating imbalance and discrimination in the entire business of the IGW (International Gateway) Operators. All other carriers are paying at 0.020 USD per minute. Only the respondent No. 2 is paying at 0.015 USD per minutes by dint of said injunction, which is highly discriminatory and absolutely an abuse of the process of law.
- (O) That it is submitted that at the time of executing the agreement the call termination rate was 0.0345, but thereafter, on 18.09.2014 the call termination rate was unilaterally reduced to 0.015 USD per minute by the BTRC for temporary period & experimental basis (অস্থায়ী ও পরীক্ষামূলক) which was accepted by all the carriers including the instant respondent No. 2 who all provided services at the reduced rate. No objection was ever been raised by the respondent No. 2 before or at the time of enhancement and reduction of said call termination rate. But with an utter surprise when on 24.11.2015 the BTCL under the directives of BTRC dated 24.08.2015 and 22.09.2015 informed all the carriers about the enhancement of call termination rate from 0.015 USD to 0.020 USD per minute, then only the 10 (ten) carriers of BTCL out of other more than 80 carriers. The BTRC is not a party to the aforesaid agreements while the determination of call termination rate is absolutely falling under the jurisdiction of the BTRC and the Government. Here, the BTCL is nothing more but a domestic implementing body of the directives of the BTRC like other companies in our country. Therefore, the determination of call termination rate is not the subject matter of the agreement executed between the BTCL and the international carriers.
- (P) That it is submitted that it is already settled by the Hon'ble Appellate Division that the period of agreement has already been expired and enhancement of call rate was done under the directives of BTRC which falling outside the purview of BTCL; therefore, the arbitration clause of the said agreement has no application to this matter and it is beyond the scope/jurisdiction of the arbitral tribunal."

3. That the petitioner also filed supplementary affidavit for providing additional documents and grounds. Copies of the arbitration applications and supplementary are annexed hereto and marked as **Annexure “1” Series.**
4. That it is stated that at the time of admitting the arbitration application filed by the petitioner, the High Court Division was pleased to stay all further proceedings in Arbitration Case in Metro Plus Limited (U.K.) vs. BTCL vide order dated 15.12.2016. Copy of the Order dated 15.12.2016 is annexed hereto and marked as **Annexure “2”.**
5. That the respondent No.2 submitted several Affidavit-in-Oppositions stating *inter-alia* that-
 - “(A) That the petitioner has challenged the jurisdiction of the Arbitration proceeding between the respondent No. 2 as claimant and the petitioner before the Arbitral Tribunal constituted by Mr. Justice Md. Ruhul Amin, former Chief Justice of Bangladesh, Mr. Justice Syed Amirul Islam, former Justice of Hon’ble High Court Division of the Supreme Court of Bangladesh and Mr. M.I. Farooqui, Senior Advocate, Supreme Court of Bangladesh.
 - (B) That High Court Division vide order dated 15.12.2016 admitted the above application and directed to issue notice upon the respondents in the following terms :
 “This is an application under section 20(1) & (2) (ka)(a) of the Arbitration Act, 2001 (‘the Act’). Let a notice be issued calling upon the Opposite Parties to show cause within 3 (three) weeks as to why the powers of this Court should not be invoked in deciding upon the jurisdiction of the concerned Arbitral Tribunal.
 Let all further proceedings in Arbitration Case in Metro Plus Limited (U.K.) vs. BTCL now pending before the respondent No. 1 Arbitral Tribunal be stayed for a period of 3 (three) months from date.
 Let this case appear in the list for hearing on 15.02.2017.
 Let notices be served upon all the Opposite Parties at the cost of the Petitioner.”
 - (C) That the above application filed by the petitioner challenging the jurisdiction of the Arbitration Tribunal, at this stage, is not maintainable for the reasons stated hereinafter.
 - (D) That the case of the petitioner is that the Hon’ble Appellate Division in Civil Petition for Leave to Appeal Nos. 1297-1300 of 2016 vide judgments dated 16.05.2016, 31.07.2016 and 09.02.2016 held that the agreement between BTCL and the respective parties expired. The respondent No. 2 is not party to the said Civil Petitions. But the petitioner assumes that the arbitration proceeding has become barred by law, since the Appellate Division held the agreement is expired. On careful perusal of the judgment of the Hon’ble Appellate Division in the said Civil Petitions, it appears that the Hon’ble Appellate Division, nowhere in the judgment held that arbitration proceeding has become without jurisdiction. Moreover, the facts of the arbitration case between petitioner and the respondent No. 2 are also different from the facts of the said Civil Petitions.
 - (E) That under section 20(1) of the Arbitration Act, 2001, the Hon’ble High Court Division can give decision as to jurisdiction of the Tribunal provided the Hon’ble High Court Division is satisfied in respect of the conditions set out under section 20(2) of the Arbitration Act, 2001.

- (F) That neither of the conditions under section 20(2) of the Arbitration Act, 2001 favours for maintaining the above application of the petitioner. No cost will be saved if the above application is entertained, because the proceeding of the arbitration has been concluded and passing award is just pending. The Arbitration Tribunal vide order No. 48 dated 14.12.2016 concluded the hearing and fixed for passing of pronouncement of award. The said order dated 14.12.2016 is reproduced herein below :

“Mr. Ahsanul Karim with Mr. Khairul Alam Choudhury, Mr. Tanveer Hossain Khan and Mr. Abdul Qaium, Advocates are present on behalf of the Claimant. On the other hand, Mr. Kazi Mynul Hassan with Mr. Md. Mohsin Miah, Advocates are present on behalf of the respondent.

The learned Counsel for the Respondent has concluded his submissions by way of giving reply to the submission of the Claimant’s Counsel. Thus the hearing of the case is concluded.

The date of pronouncement of the award will be notified to the parties after completion of the necessary formalities and preparation of the award vide Order No. 46 dated 05.12.2016 the parties were directed to deposit an amount of Tk. 2,00,000/- each by 08.12.2016 towards the incidental cost of the proceeding. The Claimant has complied with that order but the Respondent neither complied with the above order nor took any steps. The respondent is directed to pay the said amount i.e. Tk. 2,00,000/- towards the incidental cost of the proceeding positively by 05.01.2017 to the Secretary of the Tribunal.

Here it may be mentioned that vide order dated 16.05.2016, 12.10.2016 and 26.10.2016 the Respondent had been directed to pay the additional honorarium of the Chairman and learned Arbitrator of the respondent. It may be noted that pursuant to order dated 16.05.2016 the Claimant had complied with the said order.”

- (G) That since the above arbitration matter is pending for award, there is no scope to reduce or save the cost and from this fact it is also ex facie that the petitioner has not come promptly before the Hon’ble High Court Division, rather the petitioner has come before the Hon’ble High Court Division at the extremely belated stage. Therefore, the conditions set out in section 20(2)(ka) & (kha) of the Arbitration Act, 2001 not being satisfied, the above application is liable to be dismissed.
- (H) That the petitioner filed an application dated 9.10.2016 for vacating the order of injunction and amendment of statement of claim before the Arbitration Tribunal. The petitioner filed the said judgment dated 16.05.2016 of the Hon’ble Appellate Division in CP Nos. 1297-1300 of 2016 and 1362-1365 of 2016 before the Arbitration Tribunal and submitted that the said Tribunal cannot adjudicate the issues. Relevant part of the said application dated 19.10.2016 of the petitioner is quoted below :

“14. That it is submitted that the Hon’ble Appellate Division of the Supreme Court of Bangladesh in CP Nos. 1362-1365 of 2016 held in effect that the rate change notification vide Memo No. ITS. 01-91/2010/187 dated 24.11.2015, is issued in compliance with the directives of the BTRC, the regulatory authority, as

such not Arbitrable by this Hon'ble Tribunal. Therefore this Hon'ble Tribunal has no option but to follow the decision of the Hon'ble Appellate Division and this Hon'ble Tribunal shall refrain from adjudicating anyway to avoid any inconsistency with the decision of the Hon'ble Appellate Division.

15. That it is submitted that any endeavor to adjudicate legality of the rate change notification vide Memo No. ITS. 01-91/2010/187 dated 24.11.2015 after the decision of the Hon'ble Appellate Division is indeed futile exercise of jurisdiction and authority and unduly complicated the scenario of this Arbitration proceeding and will be waste of valuable time of this Hon'ble Tribunal."

(I) That the Tribunal vide order No. 38 dated 12.10.2016 noted the said application dated 10.10.2016 of the petitioner submitting the said judgment dated 16.05.2016 of Hon'ble Appellate Division of the Supreme Court of Bangladesh before Tribunal.

(J) That thereafter, the Tribunal vide order No. 39 dated 15.10.2016 decided that since the arbitration has arrived at argument stage, the Tribunal will dispose of the entire matter at the time of passing of the award. Relevant part of the said order No. 39 dated 15.10.2016 is quoted below :

"The learned Counsel Mr. Kazi Mynul Hasan wants to press the application filed by the Respondent on 10.10.2016 after serving a copy on the other side for vacating the order of injunction dated 14.01.2016 passed by this Tribunal and amendment of Statement of Claim and intended to make arguments on the aforementioned petition and make arguments. Since the Tribunal is on hearing the argument of the matter on merit, the Tribunal is of opinion that there is no scope to hear the interlocutory matter at this stage as the entire matter will be disposed of at the time of passing Award. The Respondent is at liberty to place his argument on the afore-matter at the time of hearing the matter on merit."

(K) That the petitioner as respondent in the said arbitration having accepted the said order dated 15.10.2016 of the Tribunal, filed another witness statement dated 16.10.2016 of RW-3. The Tribunal also vide order No. 40 dated 16.10.2016 accepted the said witness statement dated 16.10.2016. On 16.10.2016, the petitioner is respondent started argument before the Tribunal.

(L) That thereafter, the petitioner, as respondent of the arbitration, submitted its argument in the form of written submission before Tribunal which the Tribunal vide order No. 41 dated 25.10.2016 noted. Thereafter, the petitioner as respondent of the arbitration proceeding completed argument on 14.12.2016 by way of giving reply to the argument of the claimant, which the Tribunal vide order No. 48 dated 14.12.2016 noted. On 14.12.2016 the respondent submitted his complete written submission dated 14.12.2016. The respondent before the Tribunal submitted that in view of the said judgment dated 16.05.2016 of Hon'ble Tribunal, "the decision of the Appellate Division however dumped the scope of arbitration once for all....". Therefore, the petitioner has raised the issue of jurisdiction of arbitration in view of the judgment of the Hon'ble Appellate Division before the Arbitration Tribunal.

- (M) That section 17 of the Arbitration Act, 2001 provides that the Arbitration Tribunal has the authority to give decision as to its jurisdiction including existence of valid arbitration agreement.
- (N) That therefore, the Tribunal has the authority to decide whether there is existence of valid arbitration agreement and whether the Tribunal has jurisdiction to arbitrate the issues pending before the Arbitration Tribunal. The petitioner as well has submitted in respect of jurisdiction of the Arbitration Tribunal in view of judgment dated 16.05.2016 of the Hon'ble Appellate Division. Therefore there is no good reason for filing the above application challenging the jurisdiction of the Arbitration Tribunal at the fag end, when hearing has been concluded and the entire matter is pending for passing award. Hence, condition set out in section 20(2)(ga) of the Arbitration Act, 2001 has not been fulfilled as well. Therefore, the above application is liable to be dismissed.
- (O) That the petitioner has filed this application raising jurisdictional issue of Arbitration Tribunal after completion of hearing, pending passing of award, malafide. The petitioner has not paid the additional honorarium of the Chairman of the Arbitration Tribunal, Mr. Justice Md. Ruhul Amin, former Chief Justice of Bangladesh as well as its own Arbitrator, Mr. M.I. Farooqui, Senior Advocate, Supreme Court of Bangladesh. The Tribunal vide order No. 48 dated 14.12.2016 noted the failure of the petitioner to pay the honorarium of Chairman of the Arbitration Tribunal and its own Arbitrator. The petitioner has not paid the said honorarium till date. The petitioner has filed the above application with a bad faith to avoid payment of the Chairman of the Tribunal and its own Arbitrator in a very ingenious manner. Therefore, the above application of the petitioner may be dismissed.
- (P) That the petitioner claims that the Government is losing revenue, due to the arbitration between the petitioner and respondent No. 2. This is absolutely incorrect and perverse assertion on part of the petitioner. BTRC fixes the maximum and minimum rate. The petitioner shares its revenue with Government on the basis of minimum rate, which is 1.5 cents per minute. But if the actual termination rate is fixed minimum rate, i.e. at 2 cents, then the petitioner will not share revenue with Government at 2 cents per minute, rather in this situation as well petitioner shall share revenue on the basis of minimum rate, i.e. 1.5 cents per minute. Hence if the termination rate is enhanced, the Government shall not be benefited. All the IGWs has created a forum under the name and style IGW Forum under agreement dated 03.03.2015, wherein they have agreed that they share revenue with Government on the basis of minimum rate, but they will fix actual termination rate as per their whim , which the said Forum fixed at 2 cents per minute. The said IGW Forum has created a monopoly situation and also prejudicial to competition amongst the operators in violation of section 30(1)(ঙ), section 47(5)(ঐ) and section 29(ব) of the Bangladesh Telecommunication Regulatory Commission Act, 2001 and has created a situation where all the IGW Operators have ganged up to deprive the Government of Bangladesh form revenue as per their license issued by BTRC. License issued by

BTRC, requires to share revenue on the gross earning. But IGW Operators have ganged up under the said Agreement dated 03.03.2015 to deprive the Government from revenue and they pay Government a share of the revenue having calculated only on the basis of minimum rate, when this IGW Forum wants to sell the call terminations at a higher rate. Further under the said agreement dated 03.03.2015, they have agreed that IGW Forum shall fix the actual termination rate (it's not BTRC) and all the IGW Operators have to terminate call at the rate fixed by IGW Forums. This agreement is against public policy and the provision of said Bangladesh Telecommunication Regulatory Commission Act, 2001. Therefore, the assertion of the petitioner that the Government is being deprived of revenue is incorrect.

- (Q) That the petitioner and the respondent No. 2 executed the agreement on 26.01.2012. The petitioner now argues that the said agreement expired on 26.01.2012. But the respondent No. 2 submits that the said agreement has been continuing after 6 (six) months from the date of agreement. The matter is before the Tribunal to decide whether the agreement had been continued beyond 6 (six) months. The petitioner's various conducts and steps after 6 (six) months from the date of agreement prove that the petitioner surrendered and accepted the jurisdiction of the Arbitration Tribunal to decide the entire matter.
- (R) That the Arbitration Tribunal has all the authority to decide whether the said agreement dated 26.01.2012 is subsisting or not. The tribunal has the jurisdiction to decide whether there is a valid arbitration agreement. Further, the petitioner has also made detailed submission before the Tribunal. The petitioner without waiting to see the award in this respect, hastily has come before this Hon'ble Court to annul the whole proceeding of the arbitration at a most belated stage. Since the arbitration tribunal has the authority to decide the issues raised before this court in this application and since the hearing of the arbitration has been concluded and the petitioner has also raised the issue of jurisdiction before the Tribunal, which in view of provision of Arbitration Act, 2001 Arbitral Tribunal can arbitrate, the above application may be dismissed summarily. Moreover, the Hon'ble Appellate Division in various decision has encouraged disputes resolution through arbitration, this Hon'ble Court may be pleased to dismissed the above application can be dismissed summarily.
- (S) That the statements made in paragraph Nos. 2 and 4 to 21 of the application dated 20.11.2016 of the petitioner are incorrect, misleading and in most of the cases are irrelevant, and hence denied.
- (T) That the above application is related to jurisdiction of the Arbitration Tribunal whether the arbitration tribunal can adjudicate the matters submitted before the Tribunal. For the reasons stated above, the respondent No. 2 submits that the Arbitration Tribunal has all the jurisdiction to arbitrate the disputes involved between the petitioner and the respondent. The change of rate is also subject matter of arbitration, which the Tribunal can adjudicate upon. The witnesses of the petitioner have given detailed deposition in respect of change of rate. Therefore, the petitioner

as respondent having adduced evidences in respect of change of rate and having made detailed arguments on this issue, has surrendered to Arbitration Tribunal to adjudicate the said matter.”

5. That the respondent no. 2 also filed several supplementary affidavits. Copies of the affidavits in oppositions and supplementary are annexed hereto and marked as **Annexure “3” series**.
7. That it is submitted that it is already settled by the Appellate Division in Civil Petition for Leave to Appeal Nos. 1297 – 1300 of 2016 and 1362 – 1365 vide judgment dated 16.05.2016 that the enhancement of call rate was done under the directives of the BTRC which falling outside the purview of BTCL; therefore, the arbitration clause of the said agreement has no application to this matter and it is beyond the scope/jurisdiction of the arbitral tribunal, but the High Court Division failed to act upon the binding precedent of the Appellate Division; as such the impugned judgment and order passed by the High Court Division is liable to be set aside.
8. That it is submitted that the enhancement of international call termination rate is neither the subject matter of the BTCL nor the subject matter the alleged agreement; so the enhancement of the call termination rate cannot come under the jurisdiction of the arbitral tribunal- respondent No. 1 who has been constituted under the aforesaid agreement on some other issues but the High Court Division failed to appreciate this point of lack of jurisdiction of the arbitral tribunal; as such the impugned judgment and order passed by the High Court Division is liable to be set aside.
9. That it is submitted that the petitioner filed the arbitration application impugning the order of injunction passed by the Arbitral Tribunal which was creating imbalance and discrimination in the entire business of the IGW (International Gateway) Operators. All other carriers are paying at 0.020 USD per minute. Only the respondent No. 2 was paying at 0.015 USD per minutes by dint of said injunction, which is highly discriminatory and absolutely an abuse of the process of law; but the High Court Division failed to act upon the binding precedent of the Appellate Division; as such the impugned judgment and order passed by the High Court Division is liable to be set aside.
10. That it is stated that following the due procedure of law the petitioner filed an application being PC No. 790 dated 8.04.2018 for obtaining certified copy of the impugned judgment and order dated 25.03.2018 and 27.03.2018 passed by the High Court Division in Arbitration Application No. 37 of 2016, but the same has not been made ready yet for delivery.

Drawn and filed by :

(.....)

Advocate-on-record
For the Petitioner.

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL MISCELLANEOUS PETITION NO. OF 2018.

(Arising out of Arbitration Application No. 37 of 2016)

IN THE MATTER OF:

An application for stay.

AND

IN THE MATTER OF:

Bangladesh Telecommunications Company Limited
(BTCL).

----- **Petitioner.**

–VERSUS–

The Arbitral Tribunal and another.

..... **Respondents.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Hon'ble Justices of the Hon'ble Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That this is an application for stay filed in this Civil Miscellaneous Petition which has arisen out of the impugned Judgment and Order dated 25.03.2018 and 27.03.2018 passed by the High Court Division in Arbitration Application No. 37 of 2016 rejecting the application.
2. That it is stated that at the time of admitting the arbitration application filed by the petitioner, the High Court Division was pleased to stay all further proceedings in Arbitration Case in Metro Plus Limited (U.K.) vs. BTCL vide order dated 15.12.2016.
3. That it is submitted that it is already settled by the Appellate Division in Civil Petition for Leave to Appeal Nos. 1297 – 1300 of 2016 and 1362 – 1365 vide judgment dated 16.05.2016 that the enhancement of call rate was done under the directives of the BTRC which falling outside the purview of BTCL; therefore, the arbitration clause of the said agreement has no application to this matter and it is beyond the scope/jurisdiction of the arbitral tribunal, but the High Court Division failed to act upon the binding precedent of the Appellate Division; as such the all further proceedings of Arbitration Case between Metro Plus Limited (U.K.) and BTCL may kindly be stayed for ends of justice.

4. That it is submitted that the enhancement of international call termination rate is neither the subject matter of the BTCL nor the subject matter the alleged agreement; so the enhancement of the call termination rate cannot come under the jurisdiction of the arbitral tribunal- respondent No. 1 who has been constituted under the aforesaid agreement on some other issues but the High Court Division failed to appreciate this point of lack of jurisdiction of the arbitral tribunal; as such the all further proceedings of the said Arbitration Case may kindly be stayed for ends of justice.
5. That it is submitted that the petitioner filed the arbitration application impugning the order of injunction passed by the Arbitral Tribunal which was creating imbalance and discrimination in the entire business of the IGW (International Gateway) Operators. All other carriers are paying at 0.020 USD per minute. Only the respondent No. 2 was paying at 0.015 USD per minutes by dint of said injunction, which is highly discriminatory and absolutely an abuse of the process of law; but the High Court Division failed to act upon the binding precedent of the Appellate Division; as such the all further proceedings of the said Arbitration Case may kindly be stayed for ends of justice.
6. That it is submitted that there are more than 80 carriers who are providing international call termination services into Bangladesh at the enhanced call rate amounting 0.020 USD per minute. The call termination rate was enhanced by the BTRC in compliance with the decision taken by the Government who is authorized under law to determine and approve the call rate and other charges and fees in telecommunications business in Bangladesh. The determination and approval of the call termination rate is absolutely falling under the jurisdiction of the Government of Bangladesh and BTRC. The BTCL is nothing more than a mere complying and implementing company like other telekom companies in our country. Moreover, it is specifically mentioned in the alleged agreement that the call termination rate is subject to change according to the directives of the BTRC (clause I.2.2 of Annexure I of the agreement). But the respondent No. 1 vehemently failed to examine these issues and passed the impugned order of injunction which is beyond its jurisdiction. Similarly, the High Court Division failed to appreciate this issue and also to act upon the binding precedent of the Appellate Division; as such the all further proceedings of the said Arbitration Case may kindly be stayed for ends of justice.
7. That it is submitted that at the time of executing the agreement the call termination rate was 0.0345, but thereafter, on 18.09.2014 the call termination rate was unilaterally reduced to 0.015 USD per minute by the BTRC for temporary period & experimental basis (অস্থায়ী ও পরীক্ষামূলক) which was accepted by all the carriers including the instant respondent No. 2 who all provided services at the reduced rate. No objection was ever been raised by the respondent No. 2 before or at the time of enhancement and reduction of said call termination rate. But with an utter surprise when on 24.11.2015 the BTCL under the directives of BTRC dated 24.08.2015 and 22.09.2015 informed all the carriers about the enhancement of call termination rate from 0.015 USD to 0.020 USD per minute, then only the 10 (ten) carriers of BTCL out of other more than 80 carriers. The BTRC is not a party to the aforesaid agreements while the determination of call termination rate is absolutely falling under the jurisdiction of the BTRC and the Government. Here, the BTCL is nothing

more but a domestic implementing body of the directives of the BTRC like other companies in our country. Therefore, the determination of call termination rate is not the subject matter of the agreement executed between the BTCL and the international carriers, which is also settled by the Appellate Division in the aforesaid Civil Petitions. But the High Court Division failed to appreciate this issue; as such the all further proceedings of the said Arbitration Case may kindly be stayed for ends of justice.

WHEREFORE, it is most humbly prayed that this Hon'ble Court would graciously be pleased to stay the all further proceedings of Arbitration Case between Metro Plus Limited (U.K.) and BTCL for ends of justice and/or to pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Drawn and filed by:

(.....)

Advocate-on-record
For the Petitioner.

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL PETITION FOR LEAVE TO APPEAL NO. _____ OF 2018.

IN THE MATTER OF:

An application under Article 103 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF :

1. Golam Sarwar
2. Golam Kibria

All sons of Al-haj late Golam Mowla Contractor of 206, Muhuripara, Jahaj Building North Agrabad of Pathantooli, Police Station- Double Mooring, District- Chittagong.

..... **PETITIONERS**
(Petitioners in Civil Revision)

–VERSUS–

1. Shamsun Nahar Begum, wife of
2. Nasima Akhtar, daughter of
3. Shahin Akhtar, daughter of Al-haj late Golam Mowla Contractor, all of 206, Muhuripara, Jahaj Building North Agrabad, Post Office- Pathantooli, Police Station- Double Mooring, District- Chittagong.

..... Respondents
(Opposite parties in Civil Revision)

4. Export Import Bank of Bangladesh Limited, Agrabad Branch, 6, Mowla Chamber, Agrabad Commercial Area, Police Station- Double Mooring, District- Chittagong.
5. Manager, Export Import Bank of Bangladesh Limited, Agrabad Branch, 6, Mowla Chamber, Agrabad Commercial Area, Police Station- Double Mooring, District- Chittagong.
6. Managing Director, Export Import Bank of Bangladesh Limited, Head Office, Printers Building, No.5, Rajuk Avenue, Dhaka-1000.
7. Chairman, Export Import Bank of Bangladesh Limited, Head Office, Printers Building, No.5, Rajuk Avenue, Dhaka-1000.

..... Proforma-respondents
(Opposite parties in Civil Revision)

-AND-**IN THE MATTER OF :**

Judgment and Order dated 24.07.2017 passed by the High Court Division in Civil Revision No. 1936 of 2009 discharging the Rule.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Hon'ble companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That this Civil Petition for Leave to Appeal is directed against the judgment and Order dated 06.02.2017 passed by the High Court Division in Civil Revision No. 203 of 1997 discharging the Rule.
2. That the petitioner filed Civil Revision No. 1936 of 2009 before the High Court Division contending inter-alia that—
 - A. That the plaintiffs petitioners opposite parties Nos. 1 and 3 herein filed the instant suit for mandatory injunction against the defendants Nos. 1 to 6 opposite parties who are petitioners No. 1 and 2 opposite parties Nos. 4 to 7 herein on 15.5.2008.
 - B. That the case of the plaintiffs, in short, is that the suit land was purchased by the father of the plaintiffs Nos. 2 and 3 and the defendants No. 5 and 6 and husband of plaintiff No.1 and he got built 6 storied building with C.D.A plan; that B.S. Khatian was recorded in the names of the predecessors of the plaintiffs and subsequently mutation khatian was recorded in the name of the plaintiffs as well as in the names of the Proforma defendants Nos. 5 and 6; that the plaintiffs' father during his life time let out the ground floor and first floor to the defendants on 12.5.1999 for 6 (six) years and after the death of plaintiffs' father the defendants sometimes paid rent to the heirs of him; that after the expiry of said tenancy agreement, the defendants by instituting a House Rent Control Case being No. 30 of 2006 had been depositing rent there; that the Proforma defendants Nos. 5 and 6 are the sons of late Golam Mowla and they did not take any care and look after their mother and sisters Plaintiff No.1, 2 and 3 respectively; that at present the plaintiff No.1 is suffering from serious types of diseases with diabetes due to her old age and for her treatment she requires money; that presently it is seen that the defendants had been making their banking transactions in the Second and third floors of the suit land without any tenancy agreement with the plaintiffs and the Proforma defendant Nos. 5 and 6; that inspite of repeated reminders verbally and in writing the defendants did not make any reply of paying rents making tenancy agreement of the suit land and hence the plaintiffs were constrained to file the instant suit against the defendants for mandatory injunction on 15.5.2008.
 - C. That the case of the defendants Nos. 5 and 6 in short is that the defendants Nos. 5 and 6 contested the suits by filing written objections denying the material allegation of the applications of the temporary injunction and adinterim mandatory injunction contending inter alia that the applications are not maintainable in its present form and forum; that the applications of the plaintiffs are barred by estoppel, waiver and acquiesces; that the schedules of the applications of the plaintiffs are indefinite, unspecified, vague and which contains no boundary and in a Vague and indefinite schedule, there can not be any injunction, temporary of mandatory form; that the applicants of the plaintiffs are barred by Section 42 of the Specific Relief Act and which are not, at all, tenable in law to the context of the case and which are liable to be rejected with cost; that the plaintiffs have no right, title, interest and possession in the suit land and as such they have no locus standi to file the instant suit against the

defendants as the suit land was orally gifted by the father of the plaintiffs to the defendants Nos. 5 and 6 on 25.9.1998 which was confirmed by the plaintiff's father by declaration on oath before the Notary Public of Bangladesh on 12.01.1999; that the plaintiffs' case is false, baseless, imaginary, motivated, harassing and malafide and the plaintiffs' attorney Manjur Alam Chowdhury collusively by practicing fraud obtained a Power of Attorney filed the instant suit against the defendants for grasping the suit land; that the defendants Nos. 5 and 6 after the death of his father expending 2 crores of Taka get built 6 multistoried building and he letout 2nd and 3rd floors to the defendants Nos. 1 and 4 by a tenancy agreements dated 1.03.2005 and 28.05.2007 respectively and the defendants have been paying rents regularly to the defendants Nos. 5 and 6 before filing of the suit with the knowledge of the plaintiffs and others; that the defendants Nos. 5 and 6 had been taking all sorts of cases of their mother plaintiff No.1 and the plaintiff Nos. 2 and 3 though they are married and the defendant Nos. 5 and 6's father had vast landed properties exapting the suit land and plaintiff No.1 has still one Crore taka bank deposit and still she has no want of money and hence the applications filed by the plaintiffs are liable to be rejected.

- D. That it is stated that the defendants Nos. 5 and 6 after appearing in the suit filed two written objections against the applications of temporary injunction and ad-interim mandatory injunction filed by the plaintiffs and after hearing the learned Advocates of the respective parties learned Trial Court stayed proceedings of the temporary injunction of dated 15.5.2008 and ad-interim mandatory injunction of dated 26.5.2008 on 01.06.2008 and being aggrieved by and dissatisfied with the judgment and order dated 01.6.2008 passed by Mr. Md. Akbar Ali Khan, Senior Assistant Juge-in-Chamber, 2nd Court at Sadar, Chittagong in Other Class Suit No. 147 of 2008 the plaintiffs as petitioners filed a Civil Revision before the learned District Judge, Chittagong under section 115(2) of the Code of Civil Procedure and subsequently which was transferred to the 3rd Court of learned Additional District Judge, Chittagong for disposal. The learned Revisional Court without properly discussing the facts, circumstances of the case and not elaborately and properly discussing the case of the defendants Nos. 5 and 6 petitioners herein and without discussing the law points illegally allowed the revision ex-parte by setting aside the judgment and order passed by the learned Trial Court.
- E. That it is stated that the learned Trial Court with due consideration of the facts and circumstances of the case, law points and other materials on records of the respective parties legally stayed the proceedings of temporary injunction and ad interim mandatory injunction on 1.6.2008.
- F. That it is stated that the learned revisional Court without, at all, considering the facts and circumstances of the case, law points, other materials on records of the respective parties and without, at all, considering 2 written objections of the defendants Nos. 5 and 6 most illegally allowed the revision ex-parte by setting aside the judgment and order dated 1.6.2008 passed by the learned trial court and as such the learned revisional Court committed error of an important question of law resulting in an erroneous decision occasioning failure of justice.

- G. That it is stated that the learned revisional Court committed error of an important question of law resulting in erroneous decision occasioning failure of justice in not, at all, considering that the plaintiffs admittedly being the co-sharers in the suit land can not be graced with a decree of injunction restraining the co-sharers defendants Nos. 5 and 6 from enjoyment of the ejmali property.
- H. That it is stated that the learned revisional Court committed error of an important question of law resulting in erroneous decision occasioning failure of justice in not, at all, considering that the suit land was not partitioned earlier by metes and bonds between the co-sharers and there is no specific demarcation of the suit land allegedly encroached by the defendants Nos. 5 and 6 and as such a case no order of temporary injunction can be granted.
- I. That it is stated that the learned revisional Court committed error of an important question of law resulting in erroneous decision occasioning failure of justice in not, at all, considering that the defendant Nos. 5 and 6 have good prima facie title and arguable case and balance of convenience and inconvenience is infavour of the defendant Nos. 5 and 6 and if the subject matter of the dispute is not sufficiently specified in the suit an order of mandatory injunction can not be sustained.
- J. That it is stated that the learned revisional Court committed error of an important question of law resulting in erroneous decision occasioning failure of justice in not, at all, considering that the suit land was orally gifted to the defendant Nos. 5 and 6 by his father on 25.9.1998 which was confirmed by him on 12.1.1999 by a declaration on oath before the Notary Public of Bangladesh.
- K. That it is stated that the learned revisional Court committed error of an important question of law resulting in erroneous decision occasioning failure of justice in not, at all, considering that the suit contains 6 floors and 1st floor of which was constructed by the father of the defendants Nos. 5 and 6 and 2nd floor to 6th floor were constructed by the defendant Nos. 5 and 6 by their own money and the defendants Nos. 5 and 6 let out the 2nd and 3rd floors to the defendant Nos. 1 to 4 by two agreements dated 01.03.2005 and 28.05.2007 respectively with the knowledge of the plaintiffs and others and the 1st, 4th, 5th and 6th floors have been in possession and enjoyment of the plaintiffs and where the defendant Nos. 5 and 6 did not encroach.
- L. That it is stated that the learned revisional Court committed error of an important question of law resulting in erroneous decision occasioning failure of justice in not, at all, considering that the plaintiffs did not file the instant suit, one Manjur Alam Chowdhury husband of plaintiff No.2 collusively by practicing fraud obtaining a Power of Attorney from the plaintiffs filed the instant suit for his illegal gains for an order of mandatory injunction for executing temporary monthly tenancy agreement with the plaintiffs by the defendants Nos. 1 and 4 and to pay rents to them which is not, at all, sustainable in law.
- M. That it is stated that the learned revisional Court committed error of an important question of law resulting in erroneous decision occasioning failure of justice in not, at

all, considering that no notice was served upon the defendants Nos. 5 and 6 in Civil Revision No. 91 of 2008 and for this reason judgment and order was delivered ex-parte and which is a nullity.

- N. That it is stated that after allowing the revision being Civil Revision No. 91 of 2008 by the learned revisional Court the plaintiffs petitioners opposite parties Nos. 1 to 3 herein are trying to dispossess the defendants Nos. 5 and 6 petitioners herein from the suit land with threat and if the plaintiffs opposite parties Nos. 1 to 3 are not restrained by an order of status quo in respect of possession and position of the suit land and if an order stay operation of the impugned judgment and order dated 05.04.2009 passed by the revisional Court is passed till disposal of the Rule the petitioners herein will be highly prejudiced and shall suffer irreparable loss and injury.
3. Therefore, without assessing the facts and documents of the case properly, the Hon'ble High Court Division passed the judgment and order dated 24.07.2017 discharging the Rule.
 4. That it is submitted that the impugned judgment and order passed by the High Court Division is bad in law as well as in facts and the same is liable to be set aside.
 5. That it is submitted that the High Court Division committed an error of law without examining that the suit itself is not maintainable in its present form and manner, and in the way the mandatory prayers sought by the plaintiffs in declaratory form is also not maintainable. In the plaint, the plaintiffs did not admit the defendant nos.1-4 as their tenants and also did not recognize the defendant nos.5-6 as the owners or tenants of the suit land. Under the circumstances, the position of the plaintiffs is self-contradictory and does not create any legal right, title or claim for them either in the suit land or over the defendant nos.1-4. As such, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.
 6. That it is submitted that the High Court Division miserably failed to consider that it is the admitted position of the plaintiffs that their father constructed only the ground floor and there is no statement that how and when they completed rest 5th floors. They did not even deny about the oral gift on 25.09.1998 followed by a declaration of Heba made by the father of the plaintiffs in favor of the defendant nos.5-6. Therefore, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.
 7. That it is submitted that the High Court Division failed to examine that the defendant nos.5-6 were enjoying the ownership and possession of the suit land since 1998 and constructed building and ultimately let out the same to the defendant nos.1-4. The plaintiffs have had never to do with 1st to 5th floors. Moreover, the plaintiffs time to time being unduly influenced and forced by some other miscreants continued to commit forge and fraud with the defendant nos.5-6. As such, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.
 8. That it is submitted that the High Court Division vehemently failed to appreciate that the plaintiffs have no allegation or claim against the defendant Nos. 5-6. The defendant Nos. 1-4 are the tenants of the defendant Nos.5-6. The defendant Nos.1-4 executed tenancy deed with the defendant Nos.5-6, against which no dispute was raised by the plaintiffs. The

plaintiffs also did not submit sufficient documents in favour of their claim as ownership in the suit land. As such, the claim of the plaintiffs compelling the defendant Nos.1-4 to execute tenancy agreement is absolutely bogus, baseless and not tenable in the eye of law. Therefore, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.

9. That it is submitted that the High Court Division committed an error of law holding that the sub-ordinate court has so scope to stay or vacate the ad-interim order of injunction. As such, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.
10. That in the premises aforesaid the petitioner being aggrieved by and dissatisfied with judgment and Order dated 24.07.2017 passed by the High Court Division in Civil Revision No. 1936 of 2009 discharging the Rule, begs to file this Civil Petition for Leave to Appeal before the Appellate Division on the following amongst others—

GROUND S

- I. For that the impugned judgment and order passed by the High Court Division is bad in law as well as in facts and the same is liable to be set aside.
- II. For that the High Court Division committed an error of law without examining that the suit itself is not maintainable in its present form and manner, and in the way the mandatory prayers sought by the plaintiffs in declaratory form is also not maintainable. In the plaint, the plaintiffs did not admit the defendant nos.1-4 as their tenants and also did not recognize the defendant nos.5-6 as the owners or tenants of the suit land. Under the circumstances, the position of the plaintiffs is self-contradictory and does not create any legal right, title or claim for them either in the suit land or over the defendant nos.1-4. As such, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.
- III. For that the High Court Division miserably failed to consider that it is the admitted position of the plaintiffs that their father constructed only the ground floor and there is no statement that how and when they completed rest 5th floors. They did not even deny about the oral gift on 25.09.1998 followed by a declaration of Heba made by the father of the plaintiffs in favor of the defendant nos.5-6. Therefore, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.
- IV. For that the High Court Division failed to examine that the defendant nos.5-6 were enjoying the ownership and possession of the suit land since 1998 and constructed building and ultimately let out the same to the defendant nos.1-4. The plaintiffs have had never to do with 1st to 5th floors. Moreover, the plaintiffs time to time being unduly influenced and forced by some other miscreants continued to commit forge and fraud with the defendant nos.5-6. As such, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.
- V. For that the High Court Division vehemently failed to appreciate that the plaintiffs have no allegation or claim against the defendant Nos. 5-6. The defendant Nos. 1-4 are the tenants

of the defendant Nos.5-6. The defendant Nos.1-4 executed tenancy deed with the defendant Nos.5-6, against which no dispute was raised by the plaintiffs. The plaintiffs also did not submit sufficient documents in favour of their claim as ownership in the suit land. As such, the claim of the plaintiffs compelling the defendant Nos.1-4 to execute tenancy agreement is absolutely bogus, baseless and not tenable in the eye of law. Therefore, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.

- VI. For that the High Court Division committed an error of law holding that the sub-ordinate court has so scope to stay or vacate the ad-interim order of injunction. As such, the impugned judgment and order passed by the High Court Division is liable to be set aside for ends of justice.

WHEREFORE, it is most humbly prayed that this Hon'ble Court would graciously be pleased to grant leave to appeal and /or to pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Drawn and filed by :

(.....)

Advocate-on-record
For the Petitioners.

Sample

IN THE SUPREME COURT OF BANGLADESH APPELLATE DIVISION (CIVIL APPELLATE JURISDICTION)

CIVIL PETITION FOR LEAVE TO APPEAL NO. _____ OF 2018.

IN THE MATTER OF:

An application for stay.

AND

IN THE MATTER OF :

Golam Sarwar and another

..... **PETITIONERS**

-VERSUS-

Shamsun Nahar Begum and others

..... **Respondents**

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Hon'ble companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That this is an application for stay arising out of the judgment and Order dated 24.07.2017 passed by the High Court Division in Civil Revision No. 1936 of 2009 discharging the Rule.
2. Therefore, without assessing the facts and documents of the case properly, the Hon'ble High Court Division passed the judgment and order dated 24.07.2017 discharging the Rule.
3. That it is submitted that the impugned judgment and order passed by the High Court Division is bad in law as well as in facts and the same is liable to be stayed.
4. That it is submitted that the High Court Division committed an error of law without examining that the suit itself is not maintainable in its present form and manner, and in the way the mandatory prayers sought by the plaintiffs in declaratory form is also not maintainable. In the plaint, the plaintiffs did not admit the defendant nos.1-4 as their tenants and also did not recognize the defendant nos.5-6 as the owners or tenants of the suit land. Under the circumstances, the position of the plaintiffs is self-contradictory and does not create any legal right, title or claim for them either in the suit land or over the defendant nos.1-4. As such, the impugned judgment and order passed by the High Court Division is liable to be stayed.
5. That it is submitted that the High Court Division miserably failed to consider that it is the admitted position of the plaintiffs that their father constructed only the ground floor and there is no statement that how and when they completed rest 5th floors. They did not even deny about the oral gift on 25.09.1998 followed by a declaration of Heba made by the father of the plaintiffs in favor of the defendant nos.5-6. Therefore, the impugned judgment and order passed by the High Court Division is liable to be stayed.
6. That it is submitted that the High Court Division failed to examine that the defendant nos.5-6 were enjoying the ownership and possession of the suit land since 1998 and constructed building and ultimately let out the same to the defendant nos.1-4. The plaintiffs have had never to do with 1st to 5th floors. Moreover, the plaintiffs time to time being unduly influenced and forced by some other miscreants continued to commit forge and fraud with the defendant nos.5-6. As such, the impugned judgment and order passed by the High Court Division is liable to be stayed for ends of justice.
7. That it is submitted that the High Court Division vehemently failed to appreciate that the plaintiffs have no allegation or claim against the defendant Nos. 5-6. The defendant Nos. 1-4 are the tenants of the defendant Nos.5-6. The defendant Nos.1-4 executed tenancy deed with the defendant Nos.5-6, against which no dispute was raised by the plaintiffs. The plaintiffs also did not submit sufficient documents in favour of their claim as ownership in

the suit land. As such, the claim of the plaintiffs compelling the defendant Nos.1-4 to execute tenancy agreement is absolutely bogus, baseless and not tenable in the eye of law. Therefore, the impugned judgment and order passed by the High Court Division is liable to be stayed for ends of justice.

8. That it is submitted that the High Court Division committed an error of law holding that the sub-ordinate court has so scope to stay or vacate the ad-interim order of injunction. As such, the impugned judgment and order passed by the High Court Division is liable to be stayed for ends of justice.
9. That it is submitted that the High Court Division miserably failed to examine that the defendant Nos. 5-6 are the owners of the suit land, they invested a lot in developing the building from 1998 to 2003 and they let the same to the defendant Nos.1-4 on monthly tenancy basis. Therefore, there arises no question of asking for injunction or negative declaration upon the defendant Nos.1-4 for not paying rent to the defendant Nos.5-6. Such kind of arbitrary, malafide and whimsical, prayer is illegal, baseless, bogus and not tenable in the eye of law. As such, the impugned judgment and order passed by the High Court Division is liable to be stayed for ends of justice.
10. That it is submitted that the High Court Division has passed the impugned order without appreciating the facts and circumstances of the case and also without applying judicial mind. Hence, the impugned judgment and order is liable to be stayed.
11. That it is submitted that the judgment and order of the learned revisional Court based on conjecture and surmise is liable to be stayed.
12. That it is submitted that the impugned judgment and order ex-facie illegal and malafide. Hence, the impugned judgment and order is liable to be stayed.

WHEREFORE, it is most humbly prayed that this Hon'ble Court would graciously be pleased to stay operation of the judgment and Order dated 24.07.2017 passed by the High Court Division in Civil Revision No. 1936 of 2009 till disposal of the instant leave petition and /or to pass such other or further order or orders as to this Hon'ble Court may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Drawn and filed by :

(.....)
Advocate-on-record
For the Petitioner.

Sample

**IN THE SUPREME COURT OF BANLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL REVIEW PETITION NO. OF 2018

(Arising out of Civil Petition for Leave to Appeal No. 496 of 2008)

IN THE MATTER OF:

An application under Article 105 read with Article 104 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF :

Mosammat Shamsun Nahar being dead represented by her heirs :

- 1(a) Shikder Muhammad Mushahidur Rahman,
- 1(b) Humayara Khanam,
- 1(c) Saifun Nahar,
- 1(d) Jabun Nahar,

All sons and daughters of Abdul Quyum Shikder and late Mosammat Shamsun Nahar, All are of Plot No. 1, Road No. 8, Block- C, Section -1, Mirpur Housing Estate, Mirpur, Dhaka.

.....Petitioners.
(Petitioners in CP)

-Versus-

- 1. First Court of Settlement, Bangladesh Abandoned Building, Segunbagicha, Dhaka.
- 2. Government of the People's Republic of Bangladesh, represented by the Ministry of Housing and Public Works, Secretariat Building, Ramna, Dhaka.

.....Respondents.
(Respondents in CP)

- 3. S.M. Muzahidur Rahman Masum, son of Abdul Quyum Shikder and late Mosammat Shamsun Nahar, of Plot No. 1, Road No. 8, Block-C, Section-1, Mirpur Housing Estate, Mirpur, Dhaka.

4. Md. Abdul Quyum Shikder (dead now), Son of Late Moulavi Abdul Zabbar Shikder, being the husband of late Mosammat Shamsun Nahar, of Plot No. 1, Road No. 8, Block-C, Section-1, Mirpur Housing Estate, Mirpur, Dhaka.

.....**Proforma-Respondents**
(*Proforma-respondents in CP*)

AND

IN THE MATTER OF:

Review of the Judgment and Order dated 12.03.2009 passed by the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 496 of 2008 dismissing the leave petition.

To,

Mr. Justice Md. Abdul Wahhab Miah, performing the functions of the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Hon'ble Supreme Court of Bangladesh.

The humble petition of the petitioner above-named most respectfully—

S H E W E T H :

1. That this review petition has arisen out of the judgment and order dated 12.03.2009 passed by the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 496 of 2008 dismissing the leave petition.
2. That the leave petition was filed against the judgment and order dated 12.11.2007 of the High Court Division passed in Writ Petition No. 7808 of 1997 discharging the Rule and thereby affirming the judgment and order dated 24.05.1997 passed by the First Settlement Court, Dhaka, the respondent No. 1, disallowing the Settlement Case No. 212/95(Ka-283, Mirpur-1, Dhaka) regarding House No. 1-C/8-1, Mirpur, Dhaka. Copies of the leave petition along with papers thereon is annexed hereto and marked as **Annexure- "1 Series"**.
3. That the petitioner filed the writ petition impugning the judgment and order dated the 24th May, 1997 passed by the First Court of Settlement, Bangladesh Abandoned Building, Segunbagicha, Dhaka Annexure- 'H' disallowing the Case No. 212/95(ka-282, Mirpur-1, Dhaka) regarding House No. 1-C/8-1, Mirpur, Dhaka, and declaring that the petitioner shall not get the case house excluded from the 'Ka' list of the abandoned building.
4. That the fact in short is that—
 - (a) The case property belonged to one Noor Jahan Begum, wife of late Abdul Aziz who got an allotment of the same from the Ministry of Works and Urban Development, the then Government of East Pakistan now the Government of People's Republic of Bangladesh vide perpetual Registered Lease Deed No. 10430 dated 10.11.1961.

- (b) Said Noor Jahan Begum, being the sole allottee and absolute owner of the said property entered into an Agreement with the predecessor of the petitioners, Mosammat Shamsun Nahar (*hereinafter referred as said writ petitioner*) for sale of the said property for a consideration of Tk. 20,000/- only, out of which amount of Tk. 9500/- (Taka nine thousand and five hundred) only was received by the said Noor Jahan Begum who acknowledged the same and thereby executed a Deed of Agreement of Sale on 13.06.1969.
- (c) It was stipulated in the said Deed of Agreement that the said vendor, Noor Jahan Begum would obtain income tax, capital gain tax, clearance certificate and other permissive certificate within a reasonable time, and on receipt of such certificate Noor Jahan Begum would obtain payment of the balance of the consideration money from the predecessor of the present petitioners and execute and register the requisite sale deed in favor of the said writ petitioner absolutely transferring the ownership and possession of said property to her. Since then the writ petitioner and her successors are enjoying the peaceful possession in the said land without any interruption, and this has been their only place to abode till date.
- (d) However, said Noor Jahan Begum had being the owner and possessor of the said property died in 1972 before the completion of transaction leaving behind Md. Javed Ali, son of late Abdul Majid, and Babu son of late Golam Gous. The heirs of Noor Jahan obtained succession certificate from the said court of Sub-Judge, Dhaka through Succession Certificate Case No. 643 of 1978 on 21.11.1978. The succession certificate was obtained for balance payment of consideration money for the sale of the said case property being plot No. 1, Road No. 8, Block- C, Section -1, Mirpur Housing Estate, Mirpur, Dhaka.
- (e) Md. Javed Ali successor-interest of the estate of deceased Noor Jahan Begum for self and for on behalf of another successor Babu received by three money receipts balance of the consideration money on the basis of the aforesaid Agreement between said writ petitioner and late Noor Jahan Begum.
- (f) Successors of said Noor Jahan Begum as named in the succession certificate told the said writ petitioner in the last week of June, 1978, that she applied for income tax and capital gain tax and other permissive clearance certificates, and when she obtained such clearance certificates she would execute and register the necessary kabala deed in favor of the said writ petitioner. Thereafter the said writ petitioner contacted the successor of said Noor Jahan Begum on 07.03.1979 and requested them to complete the transaction. But, in spite of repeated requests the successor of said Noor Jahan Begum did not execute the kabala in favor of the said writ petitioner. Therefore, the said writ petitioner was constrained to file Title Suit No. 729 of 1979 in the 1st Court of Subordinate Judge, Dhaka for suit for specific performance of contract for execution and registration of sale deed. This suit was transferred to the 4th Court of Sub-Judge, Dhaka and renumbered as Title Suit No. 273 of 1981. On 07.12.1981 the suit was decreed by the learned Subordinate Judge and the defendant heirs of late

Noor Jahan Begum was directed to execute and register kabala deed in respect of suit property. The decree was signed on 31.12.1981. The government filed miscellaneous case, thereafter appeal and subsequently revision thereon, and became unsuccessful.

- (g) On their failure to execute the register kabala deed, the said writ petitioner started Title Execution Case No. 6 of 1982 and in this process the writ petitioner obtained the registered kabala sale deed.
 - (h) On 31.03.1985 the said writ petitioner submitted a prayer for mutation in her name regarding the said land before Assistant Commissioner, Settlement Segunbagicha, Dhaka wherein the said writ petitioner came to learn that said property has been listed as abandoned property. So mutation is not possible.
 - (i) Thereafter the said writ petitioner filed Settlement Case No. 212 of 1985 on 13.08.1986 in the First Court of Settlement Dhaka, claiming release of the property from the list of abandoned property. The matter was heard by the First Court of Settlement, Dhaka who rejected the case by the impugned judgment and order dated 24th May 1997; against which the writ petitioner filed the writ petition and became unsuccessful; against which the writ petitioner filed the leave petition which was dismissed too.
5. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that the said writ petitioner submitted in the settlement case that she has been peacefully possessing the case property since 1969, and the Government has never taken over possession of the case property. The said writ petitioner was in possession of the case property immediately before commencement of P.O. 16 of 72. Since the said writ petitioner was never a dispossessioner and has been possessing peacefully, consequently there arose no question of inclusion of said property in the 'Ka' list of the Abandoned Property since she never left the country. The writ petitioner was not absent during 25th March to 16th December, 1971. She was in the country and the ownership and possession of the said land was transferred to her before 1971. Therefore, there is no way of destroying her right and interest in the case property. The case property is not an abandoned property. So, the declaration of it as an abandoned property and inclusion of the same in the 'Ka' list of Abandoned Building is illegal. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.
 6. That it is submitted that the Appellate Division and High Court Division arrived at wrong finding that they cannot go beyond the factual finding of settlement court. It is a narrow view. Writ jurisdiction empowers the Court to examine illegality, arbitrariness and malafide in any order passed by any authority including the settlement court. Moreover, the Appellate Division did not at all consider the judgments and decrees in said Civil suit confirming the title and possession of the writ petitioner and did not consider the relevant provisions of Abandoned Property Order 16 of 1972) and Abandoned Buildings (Supplementary Provisions) Ordinance, 1985. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.

7. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that the Government did not file any written statement in the settlement case and the statement made by the said writ petitioner in writing before the settlement court was not controverted. The Government did not state anything in writing that possession of the property was taken over at any time or it was enlisted as an abandoned property legally. But the Government made some oral submissions (as noted in the impugned judgments) that the agreement of sale to the said writ petitioner by the original lessee is forged, fabricated and false. The fact is that the submission of the Government that the agreement in favor of the said writ petitioner by the lease is baseless and inasmuch as Government is not party to the agreement. Moreover, the deed of sale was executed by Subordinate Judge on 12.06.1982 in Title Execution Case No. 6 of 1982, which was subsequently confirmed in Civil Revision. The Government in its oral argument did not challenge the original lease of the property in favor of Noor Jahan Begum. The learned Settlement Court found *“on perusal of civil suit file it appears that Noor Jahan got lease of the case property from the Government of the then East Pakistan on 10.11.1961. The said writ petitioner claims her ownership in the case property on the basis of agreement dated 12.06.1969 and sale deed through court.”* Under the circumstances, there is no scope of denying the ownership of the writ petitioner in the case property without setting aside or refuting the said Title Suit and Execution Case, and the same cannot be included in the ‘Ka’ list of the abandoned property. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.
8. That it is submitted that the Appellate Division committed a serious illegality taking the view that the High Court Division was right holding that it cannot go beyond and the fact as found by the settlement court. This is absolutely an erroneous finding, because the Appellate Division and the High Court Division failed to consider that settlement case was filed after the first judgment and order passed in the Civil Suit. Thereafter, after the conclusive judgment and decree of Civil Court regarding law and fact in the same case, the settlement court cannot go beyond it. It cannot invent new fact for arriving at different finding. Therefore, the settlement court was absolutely illegal, malafide, arbitrary and of no legal effect. If the Appellate Division and the High Court Division felt that there needs further documentary evidence for arriving at correct finding, they could send the case to trial court directing the parties to file Civil Suit afresh. In this way, justice could be best served and the right to property of the petitioners would not be prejudiced. It is their only homestead. The Hon’ble Court can do complete justice in this case. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.
9. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that the Article 7 of President’s Order No. 16 of 1972 provides that the Deputy Commissioner shall take possession of the property where any abandoned property is not in possession of the owner by service of notice asking him/her to surrender the possession to the Deputy Commissioner or has agent within 7 days of the service of the order, and where she fails to surrender the Deputy Commissioner shall serve the notice on

her in a prescribed form requesting her to surrender the property within 7 days of the notice and to show cause against such surrender within such period, if she fails to do so the Deputy Commissioner shall take possession of the same. Article 15 provides that any person claiming any right or interest may within 3 months of announcing to the order chaining any interest or right therein treated by the Government as abandoned property may make an application stating that this property is not an abandoned property and his interest has not been affected by the provision of the said order. Admittedly, in the instant case no notice under Article 7 was served so as to entitle the petitioners from challenging the order treating the property as abandoned. But the Courts failed to consider this point of law. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.

10. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that the Rule 5 of Ordinance No. LIV of 1985 as well provides that the property of which possession has already been taken by the Government as abandoned property could only be listed in the 'Ka' schedule under section 5(1)(a) of the Ordinance No. LIV of 1985, but in the instant case admittedly the possession has been lying although with the petitioners. The High Court Division has not at all adverted its attention to the fact that according to clause (a) of sub-section (1) of section 5 of the Abandoned Property in possession of the Government could only be included in the "Ka' list of abandoned building in respect of which possession has been taken by issuance of notice under Article 7 of President's Order No. 16 of 1972. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.
11. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that from the admitted position of fact apart from the decree obtained in Title Suit No. 273 of 1981 proves that the petitioners are in possession since 1969 and the possession of the case property having not be taken over by the Government, listing of the property in "Ka" list is contrary to section 50 of the Abandoned Building (Supplementary Provisions) Ordinance, 1985 is illegal, and the impugned judgment and order may kindly be reviewed for ends of justice.
12. That in the premises aforesaid the petitioner begs to file this review petition before this Hon'ble Court on the following amongst others—

REASONS

- I. Because, the Appellate Division committed an error on the face of the record by not considering that the said writ petitioner submitted in the settlement case that she has been peacefully possessing the case property since 1969, and the Government has never taken over possession of the case property. The said writ petitioner was in possession of the case property immediately before commencement of P.O. 16 of 72. Since the said writ petitioner was never a dispossessor and has been possessing peacefully, consequently there arose no question of inclusion of said property in the 'Ka' list of the Abandoned Property since she never left the country. The writ petitioner was not absent during 25th March to 16th

December, 1971. She was in the country and the ownership and possession of the said land was transferred to her before 1971. Therefore, there is no way of destroying her right and interest in the case property. The case property is not an abandoned property. So, the declaration of it as an abandoned property and inclusion of the same in the 'Ka' list of Abandoned Building is illegal. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.

- II. Because, the Appellate Division and High Court Division arrived at wrong finding that they cannot go beyond the factual finding of settlement court, because the writ jurisdiction empowers the court to examine illegality in any order passed by any authority including the settlement court. Moreover, the Appellate Division did not at all consider the judgment and decrees in said Civil suit confirming the title and possession of the writ petitioner and did not consider the relevant provisions of Abandoned Property Order 16 of 1972) and Abandoned Buildings (Supplementary Provisions) Ordinance, 1985. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.
- III. Because, the Appellate Division committed an error on the face of the record by not considering that the Government did not file any written statement in the settlement case and the statement made by the said writ petitioner in writing before the settlement court was not controverted. The Government did not state anything in writing that possession of the property was taken over at any time or it was enlisted as an abandoned property legally. But the Government made some oral submissions (as noted in the impugned judgments) that the agreement of sale to the said writ petitioner by the original lessee is forged, fabricated and false. The fact is that the submission of the Government that the agreement in favor of the said writ petitioner by the lease is baseless and inasmuch as Government is not party to the agreement. Moreover, the deed of sale was executed by Subordinate Judge on 12.06.1982 in Title Execution Case No. 6 of 1982, which was subsequently confirmed in Civil Revision. The Government in its oral argument did not challenge the original lease of the property in favor of Noor Jahan Begum. The learned Settlement Court found "*on perusal of civil suit file it appears that Noor Jahan got lease of the case property from the Government of the then East Pakistan on 10.11.1961. The said writ petitioner claims her ownership in the case property on the basis of agreement dated 12.06.1969 and sale deed through court.*" Under the circumstances, there is no scope of denying the ownership of the writ petitioner in the case property without setting aside or refuting the said Title Suit and Execution Case, and the same cannot be included in the 'Ka' list of the abandoned property. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.
- IV. Because, the Appellate Division committed a serious illegality holding that the High Court Division was right holding that it cannot go beyond and the fact as found by the settlement court. This is absolutely an erroneous finding, because the Appellate Division and the High Court Division failed to consider that settlement case was filed after the first judgment and order passed in the Civil Suit. Thereafter, after the conclusive judgment and decree of Civil Court regarding law and fact in the same case, the settlement court cannot go beyond it. It

cannot invent new fact for arriving at different finding. Therefore, the settlement court was absolutely illegal, malafide, arbitrary and of no legal effect. If the Appellate Division and the High Court Division felt that there needs further documentary evidence for arriving at correct finding, they could send the case to trial court directing the parties to file Civil Suit afresh. In this way, justice could be best served and the right to property of the petitioner would not be prejudiced. It is their only homestead. The Hon'ble Court can do complete justice in this case. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.

- V. Because, the Appellate Division committed an error on the face of the record by not considering that the Article 7 of President's Order No. 16 of 1972 provides that the Deputy Commissioner shall take possession of the property where any abandoned property is not in possession of the owner by service of notice asking him/her to surrender the possession to the Deputy Commissioner or has agent within 7 days of the service of the order, and where she fails to surrender the Deputy Commissioner shall serve the notice on her in a prescribed form requesting her to surrender the property within 7 days of the notice and to show cause against such surrender within such period, if she fails to do so the Deputy Commissioner shall take possession of the same. Article 15 provides that any person claiming any right or interest may within 3 months of announcing to the order chaining any interest or right therein treated by the Government as abandoned property may make an application stating that this property is not an abandoned property and his interest has not been affected by the provision of the said order. Admittedly, in the instant case no notice under Article 7 was served so as to entitle the petitioners from challenging the order treating the property as abandoned. But the Courts failed to consider this point of law. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.

WHEREFORE, it is humbly prayed that this Hon'ble Court would graciously be pleased to review the Judgment and Order dated 12.03.2009 passed by the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 496 of 2008 dismissing the leave petition and/or pass such other or further judgment and order or judgments and orders as may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Settled by :

Drawn & filed by :

(.....)
Senior Advocate

(.....)
Advocate-on-Record.
For the Petitioner.

Sample

**IN THE SUPREME COURT OF BANLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL REVIEW PETITION NO. OF 2018
(Arising out of Civil Petition for Leave to Appeal No. 496 of 2008)

IN THE MATTER OF:

An application for maintaining status-quo in the suit property.

AND

IN THE MATTER OF:

Mosammat Shamsun Nahar being dead represented by her heirs:

Shikder Muhammad Mushahidur Rahman and others

.....**Petitioners.**

-Versus-

First Court of Settlement, Bangladesh Abandoned Building, Segunbagicha, Dhaka and others

.....**Respondents**

To,

Mr. Justice Md. Abdul Wahhab Miah, performing the functions of the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Hon'ble Supreme Court of Bangladesh.

The humble petition of the petitioner above-named most respectfully—

S H E W E T H :

1. That this an application for maintaining status-quo of the suit property has arisen out of the judgment and order dated 12.03.2009 passed by the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 496 of 2008 dismissing the leave petition.
2. That the leave petition was filed against the judgment and order dated 12.11.2007 of the High Court Division passed in Writ Petition No. 7808 of 1997 discharging the Rule and thereby affirming the judgment and order dated 24.05.1997 passed by the First Settlement Court, Dhaka, the respondent No. 1, disallowing the Settlement Case No. 212/95(Ka-283, Mirpur-1, Dhaka) regarding House No. 1-C/8-1, Mirpur, Dhaka.
3. That the petitioner filed the writ petition impugning the judgment and order dated the 24th May, 1997 passed by the First Court of Settlement, Bangladesh Abandoned Building,

Segunbagicha, Dhaka Annexure- 'H' disallowing the Case No. 212/95(ka-282, Mirpur-1, Dhaka) regarding House No. 1-C/8-1, Mirpur, Dhaka, and declaring that the petitioner shall not get the case house excluded from the 'Ka' list of the abandoned building.

4. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that the said writ petitioner submitted in the settlement case that she has been peacefully possessing the case property since 1969, and the Government has never taken over possession of the case property. The said writ petitioner was in possession of the case property immediately before commencement of P.O. 16 of 72. Since the said writ petitioner was never a dispossessor and has been possessing peacefully, consequently there arose no question of inclusion of said property in the 'Ka' list of the Abandoned Property since she never left the country. The writ petitioner was not absent during 25th March to 16th December, 1971. She was in the country and the ownership and possession of the said land was transferred to her before 1971. Therefore, there is no way of destroying her right and interest in the case property. The case property is not an abandoned property. So, the declaration of it as an abandoned property and inclusion of the same in the 'Ka' list of Abandoned Building is illegal. Hence, the Hon'ble Court may kindly be pleased to direct the parties to maintain status-quo in the suit property.
5. That it is submitted that the Appellate Division and High Court Division arrived at wrong finding that they cannot go beyond the factual finding of settlement court, because the writ jurisdiction empowers the court to examine illegality in any order passed by any authority including the settlement court. Moreover, the Appellate Division did not at all consider the judgment and decrees in said Civil suit confirming the title and possession of the writ petitioner and did not consider the relevant provisions of Abandoned Property Order 16 of 1972) and Abandoned Buildings (Supplementary Provisions) Ordinance, 1985. Hence, the Hon'ble Court may kindly be pleased to direct the parties to maintain status-quo in the suit property.
6. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that the Government did not file any written statement in the settlement case and the statement made by the said writ petitioner in writing before the settlement court was not controverted. The Government did not state anything in writing that possession of the property was taken over at any time or it was enlisted as an abandoned property legally. But the Government made some oral submissions (as noted in the impugned judgments) that the agreement of sale to the said writ petitioner by the original lessee is forged, fabricated and false. The fact is that the submission of the Government that the agreement in favor of the said writ petitioner by the lease is baseless and inasmuch as Government is not party to the agreement. Moreover, the deed of sale was executed by Subordinate Judge on 12.06.1982 in Title Execution Case No. 6 of 1982, which was subsequently confirmed in Civil Revision. The Government in its oral argument did not challenge the original lease of the property in favor of Noor Jahan Begum. The learned Settlement Court found *"on perusal of civil suit file it appears that Noor Jahan got lease of the case property from the Government of the then East Pakistan on 10.11.1961. The said writ petitioner claims her ownership in the case property on the basis of agreement dated*

12.06.1969 and sale deed through court.” Under the circumstances, there is no scope of denying the ownership of the writ petitioner in the case property without setting aside or refuting the said Title Suit and Execution Case, and the same cannot be included in the ‘Ka’ list of the abandoned property. Hence, the Hon’ble Court may kindly be pleased to direct the parties to maintain status-quo in the suit property.

7. That it is submitted that the Appellate Division committed a serious illegality holding that the High Court Division was right holding that it cannot go beyond and the fact as found by the settlement court. This is absolutely an erroneous finding, because the Appellate Division and the High Court Division failed to consider that settlement case was filed after the first judgment and order passed in the Civil Suit. Thereafter, after the conclusive judgment and decree of Civil Court regarding law and fact in the same case, the settlement court cannot go beyond it. It cannot invent new fact for arriving at different finding. Therefore, the settlement court was absolutely illegal, malafide, arbitrary and of no legal effect. If the Appellate Division and the High Court Division felt that there needs further documentary evidence for arriving at correct finding, they could send the case to trial court directing the parties to file Civil Suit afresh. In this way, justice could be best served and the right to property of the petitioner would not be prejudiced. It is their only homestead. The Hon’ble Court can do complete justice in this case. Hence, the Hon’ble Court may kindly be pleased to direct the parties to maintain status-quo in the suit property.
8. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that the Article 7 of President’s Order No. 16 of 1972 provides that the Deputy Commissioner shall take possession of the property where any abandoned property is not in possession of the owner by service of notice asking him/her to surrender the possession to the Deputy Commissioner or has agent within 7 days of the service of the order, and where she fails to surrender the Deputy Commissioner shall serve the notice on her in a prescribed form requesting her to surrender the property within 7 days of the notice and to show cause against such surrender within such period, if she fails to do so the Deputy Commissioner shall take possession of the same. Article 15 provides that any person claiming any right or interest may within 3 months of announcing to the order chaining any interest or right therein treated by the Government as abandoned property may make an application stating that this property is not an abandoned property and his interest has not been affected by the provision of the said order. Admittedly, in the instant case no notice under Article 7 was served so as to entitle the petitioners from challenging the order treating the property as abandoned. But the Courts failed to consider this point of law. Hence, the Hon’ble Court may kindly be pleased to direct the parties to maintain status-quo in the suit property.
9. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that the Rule 5 of Ordinance No. LIV of 1985 as well provides that the property of which possession has already been taken by the Government as abandoned property could only be listed in the ‘Ka’ schedule under section 5(1)(a) of the Ordinance No. LIV of 1985, but in the instant case admittedly the possession has been lying although with the petitioners. The High Court Division has not at all adverted its attention to the fact that according to clause (a) of sub-section (1) of section 5 of the Abandoned Property in

possession of the Government could only be included in the “Ka’ list of abandoned building in respect of which possession has been taken by issuance of notice under Article 7 of President’s Order No. 16 of 1972. Hence, the Hon’ble Court may kindly be pleased to direct the parties to maintain status-quo in the suit property.

10. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that from the admitted position of fact apart from the decree obtained in Title Suit No. 273 of 1981 proves that the petitioners are in possession since 1969 and the possession of the case property having not be taken over by the Government, listing of the property in “Ka” list is contrary to section 50 of the Abandoned Building (Supplementary Provisions) Ordinance, 1985 is illegal, and the Hon’ble Court may kindly be pleased to direct the parties to maintain status-quo in the suit property.
11. That it is submitted that the Appellate Division committed an error on the face of the record by not considering that the High Court Division discharged the Rule upon finding inter alia that the petitioners could not produce any original document of their Sale Deed nor the Lease Deed of Noor Jahan Begum rather she has filed certified copy of the deed of sale as it was executed by the court. The court of settlement found that a G.D. entry content which was filed recording the missing of the original documents is false. The Court also doubted the statements of witness Javed Ali ignoring the true fact Javed Ali being the successor of said Noor Jahan Begum admitted the transfer of case by Noor Jahan Begum to the writ petitioner. It is pertinent to mention that the court of settlement without applying judicial mind found that in the G.D. entry produced before them could not found any seal of the police station, but showing in original it appears that the seal of the police station shown in the back side of said G.D. entry and as such the settlement court as well the High Court Division and Appellate Division while passing the aforesaid judgments and orders they did not apply their judicial mind about the G.D. as well as the agreement for sale and thereby serious error apparently on the face of the record. Hence, the Hon’ble Court may kindly be pleased to direct the parties to maintain status-quo in the suit property.

WHEREFORE, it is most humbly prayed that this Hon’ble Court would graciously be pleased to direct the parties to maintain status-quo in the suit property (House No. 1-C/8-1, Mirpur, Dhaka) till disposal of the review petition for ends of justice and /or to pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Settled by :

(.....)
Senior Advocate

Drawn & filed by :

(.....)
Advocate-on-Record.
For the Petitioner.

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL REVIEW PETITION NO. _____ OF 2018
(Arising out of Civil Petition for Leave to Appeal No. 496 of 2008)

IN THE MATTER OF:

Mosammat Shamsun Nahar being dead represented by
her heirs:

Shikder Muhammad Mushahidur Rahman and others

.....**Petitioners.**

-Versus-

First Court of Settlement, Bangladesh Abandoned
Building, Segunbagicha, Dhaka and others

.....**Respondents**

CERTIFICATE

That this review petition has arisen out of the judgment and order dated 12.03.2009 passed by the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 496 of 2008 dismissing the leave petition.

That the leave petition was filed against the judgment and order dated 12.11.2007 of the High Court Division passed in Writ Petition No. 7808 of 1997 discharging the Rule and thereby affirming the judgment and order dated 24.05.1997 passed by the First Settlement Court, Dhaka, the respondent No. 1, disallowing the Settlement Case No. 212/95(Ka-283, Mirpur-1, Dhaka) regarding House No. 1-C/8-1, Mirpur, Dhaka.

That there caused a long time delay in filing this review petitioner, which is absolutely bonafide, because the petitioner No.1 in the Civil Petition for Leave to Appeal namely Md. Abdul Quiyun Sikder (the proforma-respondent No.4 in this review petitioner) was the main tadbirkar of the case. He was the husband of writ petitioner. Their 4 children were also substituted as petitioners in Civil Petition, but it was mainly Md. Abdul Quiyum Sikder who was acquainted with this case. But he became badly sick in 2008. He became paralysed and almost lost his memories. He had to take long bed rest. It was regular for him to get admitted in the hospital. Under the circumstances, he died on 19.11.2016 . His children are not very well-off and financially viable. On the other hand, the learned Advocate-on-Record has been very sick for a long period of time. He also could not take proper case of this case. No one informed the petitioners about the disposal of the leave petition. The consecutive deaths of the writ petitioner late Shamsun Nahar and his husband Md. Abdul Quiyum Sikder left the entire family helpless. Finally, the petitioners when went for mutating the suit properly in their names, they came to know about the case. Thereafter, when they collect information from the information help of Hon'ble Appellate Division, they found that the leave petition was dismissed long ago. Thereafter, they communicated with the learned Advocate who suggested for filing this review petition. All these things resulted delay in filing this review petition. The delay is bonafide and

unavoidable. The petitioners and their learned Advocate beg unconditional apology for this bonafide delay. If the delay is not condoned, the petitioners shall suffer irreparable loss and injury, their rights to property and life will be seriously prejudiced, which cannot be compensated in terms of money.

Moreover, as it appears to me that a serious question of law involved in this case. There are certain other important points to be decided in this case by the Hon'ble Appellate Division. As such, the impugned Judgment and Order dated 12.03.2009 passed by the Hon'ble Appellate Division should be reviewed on the following grounds amongst others—

- I. Because, the Appellate Division committed an error on the face of the record by not considering that the said writ petitioner submitted in the settlement case that she has been peacefully possessing the case property since 1969, and the Government has never taken over possession of the case property. The said writ petitioner was in possession of the case property immediately before commencement of P.O. 16 of 72. Since the said writ petitioner was never a dispossessor and has been possessing peacefully, consequently there arose no question of inclusion of said property in the 'Ka' list of the Abandoned Property since she never left the country. The writ petitioner was not absent during 25th March to 16th December, 1971. She was in the country and the ownership and possession of the said land was transferred to her before 1971. Therefore, there is no way of destroying her right and interest in the case property. The case property is not an abandoned property. So, the declaration of it as an abandoned property and inclusion of the same in the 'Ka' list of Abandoned Building is illegal. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.
- II. Because, the Appellate Division committed an error on the face of the record by not considering that the Government did not file any written statement in the settlement case and the statement made by the said writ petitioner in writing before the settlement court was not controverted. The Government did not state anything in writing that possession of the property was taken over at any time or it was enlisted as an abandoned property legally. But the Government made some oral submissions (as noted in the impugned judgments) that the agreement of sale to the said writ petitioner by the original lessee is forged, fabricated and false. The fact is that the submission of the Government that the agreement in favor of the said writ petitioner by the lease is baseless and inasmuch as Government is not party to the agreement. Moreover, the deed of sale was executed by Subordinate Judge on 12.06.1982 in Title Execution Case No. 6 of 1982, which was subsequently confirmed in Civil Revision. The Government in its oral argument did not challenge the original lease of the property in favor of Noor Jahan Begum. The learned Settlement Court found *"on perusal of civil suit file it appears that Noor Jahan got lease of the case property from the Government of the then East Pakistan on 10.11.1961. The said writ petitioner claims her ownership in the case property on the basis of agreement dated 12.06.1969 and sale deed through court."* Under the circumstances, there is no scope of denying the ownership of the writ petitioner in the case property without setting aside or refuting the said Title Suit and Execution Case, and the same cannot be included in the 'Ka' list of the abandoned property. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.

- III. Because, the Appellate Division committed a serious illegality holding that the High Court Division was right holding that it cannot go beyond and the fact as found by the settlement court. This is absolutely an erroneous finding, because the Appellate Division and the High Court Division failed to consider that settlement case was filed after the first judgment and order passed in the Civil Suit. Thereafter, after the conclusive judgment and decree of Civil Court regarding law and fact in the same case, the settlement court cannot go beyond it. It cannot invent new fact for arriving at different finding. Therefore, the settlement court was absolutely illegal, malafide, arbitrary and of no legal effect. If the Appellate Division and the High Court Division felt that there needs further documentary evidence for arriving at correct finding, they could send the case to trial court directing the parties to file Civil Suit afresh. In this way, justice could be best served and the right to property of the petitioner would not be prejudiced. It is their only homestead. The Hon'ble Court can do complete justice in this case. Hence, the impugned judgment and order may kindly be reviewed for ends of justice.
- IV. Because, the Appellate Division committed an error on the face of the record by not considering that the Article 7 of President's Order No. 16 of 1972 provides that the Deputy Commissioner shall take possession of the property where any abandoned property is not in possession of the owner by service of notice asking him/her to surrender the possession to the Deputy Commissioner or has agent within 7 days of the service of the order, and where she fails to surrender the Deputy Commissioner shall serve the notice on her in a prescribed form requesting her to surrender the property within 7 days of the notice and to show cause against such surrender within such period, if she fails to do so the Deputy Commissioner shall take possession of the same. Article 15 provides that any person claiming any right or interest may within 3 months of announcing to the order chaining any interest or right therein treated by the Government as abandoned property may make an application stating that this property is not an abandoned property and his interest has not been affected by the provision of the said order. Admittedly, in the instant case no notice under Article 7 was served so as to entitle the petitioners from challenging the order treating the property as abandoned. But the Courts failed to consider this point of law.

Since there are substantial points of law in this case and the High Court Division discharged the Rule completely based on an erroneous view and misreading of facts and law and the Civil Petition for Leave to Appeal was dismissed also on misconceived findings and erroneous observations as to the law and fact; hence, the impugned judgment and order of the Hon'ble High Court Division is liable to be set aside, and as such the impugned judgment and order dated 12.03.2009 passed by the Hon'ble Appellate Division dismissing the Civil Petition for Leave to Appeal may kindly be reviewed for ends of justice.

(.....)

Senior Advocate

For the Appellant-Petitioners.

CHAPTER 9

Writ Petition and Affidavit-in-Opposition

The power of judicial review of the High Court Division is given under Article 102 of the Constitution of People's Republic of Bangladesh. In short, we call it writ jurisdiction, and the petition filling of which we present our case before the High Court Division under Article 102 is known as writ petition. The word 'writ petition' is recognized under Supreme Court (High Court Division) Rules, 1973. Rule 3(3), Chapter IVA under the caption 'motion and mention' which provides as follows—

- (3) Filling Writ Motion application :** In case of Writ matters every application\petition for Motion shall be filed with the concerned section, which shall—
- (a) examine the application\petition and, if satisfied that it is in order, record the same as a Writ Petition with a number and year and shall send to the affidavit Commissioner for swearing in affidavit by the deponent;
 - (b) deliver a slip indicating the number of the Writ application\petition to the filing Advocate or his Law Clerk of the Writ Petitioner or his authorized agent. So that the matter may be mentioned before an appropriate Bench as prescribed below:
 - (c) on the first working day of the week, send the application\petition, to the Bench before which a mention slip has been filed by the petitioner, Advocate or the authorized agent.

Provided that in case of urgency the concerned Bench may accept a mention slip for the purpose of hearing an application\petition as Motion on any other working day.

Article 102 of our Constitution empowers the High Court Division, to issue writs in the nature of mandamus,¹ [prohibition], certiorari, habeas corpus and quo-warranto². All those are, however, issued in the discretion of the Court and generally not available if there are alternative remedies. But mere presence of alternative remedy, again in general, may inhibit the discretion of the Court but would not limit its jurisdiction, especially when there is an allegation of lack of jurisdiction, coram non judice or malafide or where there is a breach of fundamental rights. The position, however, is otherwise if there is, not only alternative remedy but that is also equally efficacious.³

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1. Second part of clause (2)(a)(i) of Article 102 confers power on the HCD to issue writs in the nature of mandamus to compel a person performing functions in connection with the affairs of the Republic or a local authority to do something that he is required by law to do. Mandamus commands a public functionary to do what he is under legal duty to do. It will issue only when that public functionary has a public duty under law and it refused to perform its legal duty. [Idrisur Rahman (Md) and others vs. Secretary, Ministry of Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh, 61 DLR 2009 HCD 523]
 2. Writ of quo-warranto is resorted to calling upon a person holding certain public office to show his competency of holding public office he is holding or for that matter to show under what authority he is holding certain public office. [Moudud Ahmed vs. Md. Anwar Hossain Khan, 28 BLD 2008 AD 81.]
 3. Siddique Ahmed vs. Government of Bangladesh, 33 BLD 2013 AD 129.

Relevant contents of Article 102 primarily indicate five types of writs which are pointed below in short—

Article 102 : Powers of High Court Division to issue certain orders and directions, etc. —

- (1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution.
- (2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law—
 - (a) on the application of any person aggrieved, make an order—
 - (i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or
 - (ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority, has been done or taken without lawful authority and is of no legal effect ; or
 - (b) on the application of any person, make an order—
 - (i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner ; or
 - (ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.

Particulars to be contained in Writ Petition

The following particulars are to be included in writ petition—

- Name of the Court – Addressing the Supreme Court of Bangladesh (High Court Division),
- Mention about Special Original Jurisdiction because the motion power of Writ is only for the High Court Division under Article 102. For that reason, it is called original jurisdiction,
- Mention about application under Article 102,
- Name, address and clear/correct details of the petitioner,
- Names, addresses and clear/correct details of the respondents,
- Cause title containing the cause of grievance i.e. the cause of action,
- All petitions before the Supreme Court, be it High Court Division or Appellate Division must address the Hon'ble Chief Justice of Bangladesh and his/her companion justices,
- With SHEWETH we start explaining our case providing the short description of the petitioner(s), respondent(s), affirming that their addresses given were correct for the purpose of serving notices/etc, statements of fact,
- Statements of facts should be precise, clear, easy to understand and to the point free from unnecessary repetitions and irrelevant assertions. Generally, organization of facts date-

wise is a good policy. It helps to avoid repetition and understand the chronology of events,

- In the last paragraph of fact, it is better to provide a connecting paragraph between facts and submissions. In this paragraph a connection between the impugned action/notice/activity and the grievance of the client can be pointed in short,
- Each paragraph of facts can be started as “That it is stated that”; or with “That” only,
- In support of facts, documents should be added in the form of annexures e.g. Letter dated 1.2.2020 is annexed hereto and marked as Annexure “A”,
- After stating all the relevant facts, we mention our submissions. Submissions are not the repetitions of facts. Submissions are the production of relevant law points basing on which the case is made out and relief is sought for,
- Submissions are generally made as “That it is submitted that” or “That it is humbly submitted that”,
- Each submission ends up with the sentence containing the plea of any of writ form e.g. if it is a writ of certiorari, then the last sentence ends like “.....; as such the impugned decision shall liable to be declared to have been done/taken without lawful authority or is of no legal effect”,
- After submission, if the writ petition is filed with photocopies of documents i.e. annexures, then it should be filed with kind leave of the Court – a statement to this effect seeking permission from the Court,
- If the writ petition is filed through authorized person/attorney – then it should be filed with kind leave of the Court – a statement to this effect seeking permission from the Court,
- Then the reason of filling this writ i.e. finding no other alternative remedy – on the following grounds amongst others,
- Grounds – started as “For that”,
- Sometimes submissions are exactly copied and pasted in the grounds, but it is better to make the grounds absolutely precise, clear, focused and on law points only unless facts come as reference and where necessary to do it for clearing the law point,
- Prayers,
- Affidavit. Each petitioner must give one affidavit. In case of more than one petitioner, all can authorize one or two for the purpose of swearing affidavit only and also for representing before the Affidavit Commissioner. All the writ petitioners must sign the Vokatnama unless they authorize one to do so, otherwise in case of more than one writ petitioner, all can sign Vokatnama and they can authorize one or more of them to swear Affidavit and sign the deponent page,
- Every writ petition to be submitted in ‘in re: motion’ form, after motion hearing if the Court would please to issue Rule, then comes the Rule which will be finally heard after final hearing.

Against writ petition contesting the Rule, the respondent(s) may file Affidavit-in-opposition and also can make verbal submission. It is better to submit Affidavit-in-opposition because it brings matter into record.

In every writ petition, there must be Vokatnama, Cover Sheet, Index, Back Sheet, Annexure Sheet, Notice. All these documents are also required in affidavit-in-opposition, supplementary or any application to be filed in a writ petition.

Particulars to be contained in Affidavit-in-opposition

Against writ petition, the respondent(s) can file affidavit-in-opposition which may contain following particulars—

- Likewise written statement and counter affidavit, the affidavit-in-opposition in a writ matter is to be submitted by the respondent who wants to contest the Rule Nisi issued in the writ petition. Before issuing Rule Nisi in a writ matter, affidavit-in-opposition is not submitted,
- Any statement contesting the writ petition can be produced in affidavit-in-opposition,
- Before stating the case on the respondent's side, the respondent must give specific denial to all the statements made in the writ petition. If there is specific denial i.e. kind of true or false like, then must be in the form of false, incorrect, misconceived and hereby denied. If partially true or partially false and the respondent doesn't want to deny specifically, then denial in the language incorrect or misconceived will be sufficient. If there is nothing to deny, then you can mention that the statements made in paragraph nomade in the writ petition are matters of record,
- Paragraph-wise denial as per the writ petition is better to be made in the affidavit-in-opposition,
- Generally, while making denial we don't state the case in details of the respondent, we only mention important facts which are relevant for denial,
- After making denial, we state the facts on the part of the respondent,
- There must be statement that anything which are not specially admitted in this opposition about the contents of the writ petition is deemed to have been denied by the respondent deponent,
- Necessary documents can be annexed as Annexures,
- In case of photocopies of Annexure, there should be statement seeking permission from the Court,
- In case of authorized person/attorney, there should be statement seeking permission from the Court,
- Submission can also be made,
- Contesting the Rule, respondent may pray for discharging the Rule,
- Any relevant statement as the respondent want can put in affidavit-in-opposition.

In writ matter, against/in response to the affidavit-in-opposition the writ petitioner may file affidavit-in-reply or supplementary affidavit as necessary.

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

IN THE MATTER OF :

AND

M/s. Scandex Knitwear Ltd. (Unit-2), represented by its Managing Director U. M. Ashek, of Plot No. 42-51, Adamjee Export Processing Zone (AEPZ), Shiddhirganj, Narayanganj.

—VERSUS—

1. Government of the People's Republic of Bangladesh, represented by its Secretary, Ministry of Finance, Bangladesh Secretariat, Dhaka.
2. Bangladesh Bank, the Central Bank of Bangladesh, represented by its Governor, of Bangladesh Bank Bhaban, Motijheel C/A, Dhaka.
3. The General Manager, Banking Prabidhi and Niti Bivagh, Bangladesh Bank, Bangladesh Bank Bhaban, Motijheel C/A, Dhaka.
4. The Deputy Director, Banking Prabidhi and Niti Bivagh, Bangladesh Bank, Bangladesh Bank Bhaban, Motijheel C/A, Dhaka.
5. The General Manager, Credit Information Bureau (CIB), Bangladesh Bank, Bangladesh Bank Bhaban, Motijheel C/A, Dhaka.

6. Trust Bank Limited, represented by its Managing Director, Corporate Head Office, Shadhinata Tower, Bir Srestha Jahangir Gate, Dhaka Cantonment, Dhaka.

.....**Proforma-Respondent.**

AND**IN THE MATTER OF:**

Impugned letter being No. বিআরপিডি(পি-১)/৬৬১/১৩(চ)/২০১৯-৭৫৭১, তারিখঃ সেপ্টেম্বর ২৯, ২০১৯ issued by the respondent No. 2 under the signature of the respondent No. 4 whimsically and arbitrarily re-scheduling the loan accounts of the petitioner in derogation of its own policy even after crediting the full amount of down-payment (Annexure- “D”).

To,

Mr. Justice Syed Mahmud Hossain, the Hon’ble Chief Justice of Bangladesh and his companion Justices of the Hon’ble Supreme Court of Bangladesh.

The humble petition of the petitioner most respectfully—

S H E W E T H :

1. That the petitioner is a private limited company carrying out 100% export oriented business by setting up industries in Adamjee Export Processing Zone (AEPZ), Shiddirganj, Narayanganj.
2. That the respondent No.1 is the Government of the People’s Republic of Bangladesh, represented by its Secretary, Ministry of Finance, Bangladesh Secretariat, Dhaka, the respondent No. 2 is the Bangladesh Bank, the Central Bank of Bangladesh, represented by its Governor, of Bangladesh Bank Bhaban, Motijheel C/A, Dhaka, the respondent No. 3 is the General Manager, Banking Prabidhi and Niti Bivagh, Bangladesh Bank, Bangladesh Bank Bhaban, Motijheel C/A, Dhaka, the respondent No. 4 is the Deputy Director, Banking Prabidhi and Niti Bivagh, Bangladesh Bank, Bangladesh Bank Bhaban, Motijheel C/A, Dhaka, the respondent No. 5 is the General Manager, Credit Information Bureau (CIB), Bangladesh Bank, Bangladesh Bank Bhaban, Motijheel C/A, Dhaka and the proforma respondent No. 6 is the Trust Bank Limited, represented by its Managing Director, Corporate Head Office, Shadhinata Tower, Bir Srestha Jahangir Gate, Dhaka Cantonment, Dhaka.
3. That for the purpose of the carrying out business, the petitioner opened LC with the respondent No. 6 bank in due process of law. The petitioner also obtained term loan and short term loan from the respondent No. 6 bank. All these loan were rescheduled on 2.07.2018. It is pertinent to mention that the present management of the petitioner company came into control in the year 2017. Photocopy of the sanction advice dated 2.07.2018 is annexed hereto and marked as **Annexure- “A”**.
4. That it is stated that the petitioner has always maintained good repayment record with the respondent No. 6 bank. Since the petitioner is a 100% export oriented garments company and the bank can adjust its credit from the LC proceeds, therefore there is no scope for the petitioner to escape payment against loan if any proceeds come from the export.

Photocopies of a letter dated 22.01.2019 showing the repayment structure of the petitioner and letter dated 3.02.2019 proposing restructure/reschedulement of loan are annexed hereto and marked as **Annexure- “B and B-1”**.

5. That due to crises in the business and unrest situation in export-import, the petitioner had to suffer huge loss in business. For ensuring continuous and un-encumbrant support for business, especially for LC, the petitioner needs to keep CIB as well as other reports of bank clean and clear. For that reason, the petitioner again proposed for restructuring, rearranging and rescheduling the loan in such reasonable and fair manner so that the petitioner can be able to repay the loan and also not to face the occasion of default. After evaluating the portfolio, project value, earning and prospect of the petitioner, the concerned bank i.e. the respondent No. 6 found the following scheme fit for restructuring/rescheduling the loans of the petitioner in the following manner—

[Fig in million BDT]

SL	Type of facility	Actual amount	DP (as per BRPD)	Amount to be rescheduled	Tenor as per BRPD circular	Exception approval from BB for
i.	1 st time Rescheduling [22 nos. Forced Loan +04 nos Time Loan +Non funded liabilities]	520.93	51.36	469.57	12-18 months	10 Years [including 01 year moratorium period]
ii.	2 nd Time Rescheduling [01 no. STL liability which was originated from Forced Loan by previous reschedule]	213.41	35.31	178.10	By further 02 years	
iii.	3 rd Time Rescheduling [Extension validity of 10 nos. of Term Loan]	1211.28	24.23 (@ 2% of O/S and No Overdue)	1187.06	By further 01 year	Further 05 years [i.e. from 30.06.24 to 30.06.29 (including moratorium from 02.08.19 to 02.02.20)]
Total		1945.62	110.90	1834.73		

The aforesaid reschedulement proposal is shortly referred to as ‘*the original proposal*’ by the concerned bank. Photocopy of the reschedulement proposal of the respondent No. 6 bank is annexed hereto and marked as **Annexure- “C”**.

6. That for finalizing the said scheme, the respondent No. 6 bank forwarded the same to the Bangladesh Bank for approval, but the Bangladesh Bank without approving the same as it was, approved a new scheme in a completely different way in the following manner vide Memo No. বিআরপিডি(পি-১)/৬৬১/১৩(চ)/২০১৯-৭৫৭১, তারিখঃ সেপ্টেম্বর ২৯, ২০১৯ (*henceforth referred to as the ‘impugned memo’*)—

“স্ক্যানডেল নিউওয়ার লিঃ এর ঋণ পুনঃতফসিলকরণ প্রসঙ্গে।

শিরোনামোক্ত বিষয়ে আপনাদের এপ্রিল ০৮, ২০১৯ ও মে ৩০, ২০১৯ তারিখের পত্র নং যথাক্রমে টিবিএল/এইচও/গার্মেন্টস ইউনিট/২০১৯/০৮১ ও টিবিএল/এইচও/গার্মেন্টস ইউনিট/২০১৯/১৫৬ এর প্রতি দৃষ্টি আকর্ষণপূর্বক জানানো যাচ্ছে যে, ব্যাংকের ঋণ আদায়ের স্বার্থে বিশেষ বিবেচনায় নিম্নোক্ত শর্তে স্ক্যানডেল নিউওয়ার লিঃ এর অনুকূলে বিদ্যমান ঋণসমূহ পুনঃতফসিলে অনাপত্তি প্রদান করা হলো :—

- ক) ৫২.১০ কোটি টাকার তলবী ঋণসমূহ পুনঃতফসিলের তারিখ থেকে ১ বছর গ্রেস পিরিয়ডসহ সর্বোচ্চ ৫ বছর মেয়াদে ১ম পুনঃতফসিল;
- খ) ২১.৩৪ কোটি টাকার তলবী ঋণসমূহ পুনঃতফসিলের তারিখ থেকে ১ বছর গ্রেস পিরিয়ডসহ সর্বোচ্চ ৫ বছর মেয়াদে ২য় পুনঃতফসিল;
- গ) ১২১.১৩ কোটি টাকার মেয়াদী ঋণসমূহের বিদ্যমান গ্রেস পিরিয়ড ০২/০৮/২০১৯ হতে ৬ মাস (০২/০২/২০২০ পর্যন্ত) বৃদ্ধিপূর্বক পুনঃতফসিলের তারিখ হতে সর্বোচ্চ ৮ বছর মেয়াদে অর্থাৎ সেপ্টেম্বর, ২০২৭ মেয়াদে ৩য় পুনঃতফসিল;
- ঘ) ২১.৩৪ কোটি টাকার তলবী ও ১২১.১৩ কোটি টাকার মেয়াদী ঋণের কিস্তি প্রকৃত আদায় ব্যতিরেকে পুনঃতফসিলকৃত ঋণের বিপরীতে রক্ষিত প্রভিশন/প্রভিশনের অংশ আয় খাতে স্থানান্তর করা যাবে না;
- ঙ) ২১.৩৪ কোটি টাকার তলবী ও ১২১.১৩ কোটি টাকার মেয়াদী ঋণের বিপরীতে প্রয়োজনীয় প্রভিশন সংরক্ষিত না হয়ে থাকলে পুনঃতফসিল পূর্ববর্তী শ্রেণীকরণের উপর ভিত্তি করে তা সংরক্ষণের ব্যবস্থা করতে হবে;
- চ) ব্যাংকের ঋণ আদায়ে ঝুঁকির বিষয়টি বিবেচনায় নিয়ে সংশ্লিষ্ট গ্রাহকের ঋণ হিসাবসমূহ পর্যাণ্ড জামানত দ্বারা আচ্ছাদিত করার পাশাপাশি ঋণ আদায়ে নিবিড় তদারকি নিশ্চিত করতে হবে; এবং
- ছ) আলোচ্য ঋণসমূহ পুনঃতফসিলের ক্ষেত্রে ডাউনপেমেন্ট এবং ঋণের মেয়াদ কাল নিরূপণ সংক্রান্ত শর্ত ব্যতীত বিআরপিডি সার্কুলার নং- ১৫/২০১২ এর অন্যান্য শর্তসমূহ এবং ট্রাস্ট ব্যাংক লিমিটেড এর পরিচালনা পর্ষদ কর্তৃক আরোপিত সকল শর্ত পরিপালন নিশ্চিত করতে হবে।

আপনাদের বিশ্বস্ত,

(নাজিয়া হক)

উপ-পরিচালক”

Photocopy of the memo dated 29.09.2019 is annexed hereto and marked as **Annexure-“D”**.

7. That it is stated that the petitioner paid all the required amount as down payment against the loan as per the prevailing circular at that time which is evident from the bank statement of the petitioner company. Photocopy of the master circular being BRPD Circular No. 15 dated 23.09.2012 is annexed hereto and marked as **Annexure-“E”**.
8. That it is stated that on 16.05.2019 the Bangladesh Bank issued a provisional circular for reschedulement providing wide facilities for the borrowers - defaulters to reschedule their loans with easy conditions. This circular has also got legality from our Apex Court who has found it legal. Under that circumstances, where the petitioner should get more benefits because it paid almost five times more for the reschedulement having adequate collateral securities and well prospect of the business, but the Bangladesh Bank is very arbitrarily depriving him of getting the benefits in which he is by operation of law as well as under the good conscience, equity and justice. Photocopy of the circular No. 5 dated 16.05.2019 is annexed hereto and marked as **Annexure-“F”**.

9. That it is stated that there is no such comprehensive law in Bangladesh for giving incentives to the good borrower defaulters. Our country does not possess perfect or efficient economy. Borrower after taking loan cannot guarantee success and profit in business always. Profit or loss is a common phenomenon in business. There are always unintentional defaulters. There are always good borrowers. One may be defaulter for some installments or for a certain period of time. It does not mean the borrower would not repay the loan. If the borrowers show good tendency to repay the loan from the previous record it signifies that it would repay the same when good time would come. Being the lending bank, the bank if continues to accommodate the borrower at their crisis moment, at least by supporting them with LC facility for genuine export-import, then it will not only help the borrowers to stand up again but also widen their scope to repay the loan. But there are no such good borrower protection laws in our country. For that shortfall, the good borrowers including the petitioner are suffering irreparable loss and injury, and also losing their business. The petitioner is a good borrower and it has been awarded with several national and international recognitions for producing good quality garments products. For ready reference some of the award copies of the petitioner under the same management of its sister concern are annexed hereto and marked as **Annexure- "G" Series**.
10. That it is clearly apparent from the bank statement that the petitioner is showing a good record of repayment, and the amount of repayment is now not less than the actual availed of loan. It is also apparent from bank statement that the petitioner has repaid the required down payment in time. Photocopy of the bank statement is annexed hereto and marked as **Annexure- "H"**.
11. That since the sanction of loan, the petitioner never stopped making repayment, but sometimes could not do as per schedulement. However, the petitioner kept requesting the respondent bank to help it to go with its business considering that it is a 100% export oriented garments industry, incorporated under the laws of Bangladesh and has contributed a lot in earning foreign currency for Bangladesh. Its contribution has widely been recognized by the Bangladesh Government with several awards including CIP, Best Supplier, etc. Its defaulting issues are not intentional and it is firmly committed to repay the loan as soon as its business will satisfy the continuous demand of the foreign buyers with the help of bank by maintaining uninterrupted LC support/transaction.
12. That it is submitted that Bangladesh Bank altered the reschedulement proposal unilaterally and arbitrarily without assigning any reason, hearing the concerned bank and the petitioner at all; as such the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
13. That it is submitted that when the concerned bank proposed a feasible reschedulement scheme for the petitioner, the central bank cannot change it in such manner thus to make it ineffective, impossible to perform and lead towards defaults. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
14. That it is submitted that every decision of the regulatory body should be backed by good reasons. Being the central bank and saviour of monetary policy, Bangladesh Bank should act in a manner which ultimately saves its subjects. Since Bangladesh Bank is providing

various types of incentives for decreasing the rates of defaulters, for recovering the loans in long term basis, for bringing the dead loans under management and recovery process, for making the loans more viable and alive, and for activating the economy by engaging all kinds of small, medium and large size entrepreneurs while the conduct of the Bangladesh Bank with the petitioner so far issuing the impugned memo altering the original scheme proposed by the concerned bank is absolutely arbitrary, discriminatory, malafide and opposite to its own policy. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.

15. That it is submitted that neither the Bank Company Act 1991 nor the Bangladesh Bank Order 1972 nor any of the master circulars of Bangladesh Bank regarding reschedulement supports the Bangladesh Bank to alter the original reschedulement scheme proposed by the concerned bank in such a manner which is seriously prejudicial, detrimental and rendering the same nonest in reality to perform. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
16. That it is submitted that against the arbitrary, discriminatory, malafide and unreasonable treatment of Bangladesh Bank, the petitioner is entitled to seek protection under law from this Honorable Court. The impugned arbitrary conduct of the Bangladesh Bank is violative of the fundamental rights of the petitioner as guaranteed under Article 27, 31, 32 and 42 of the Constitution. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
17. That it is submitted that the original reschedulement scheme of the concerned bank was altered by the Bangladesh in such a manner thus to change the basic structure and purpose of rescheduling the loan and make it impossible to perform for the petitioner, and also becomes non profitable and unworthy for the concerned bank as well. It leaves no option for the concerned bank to think reasonable for the petitioner. It curtails the hands of the concerned bank to do business in more profitable and convenient way. Generally, it is seen that when concerned bank send any reschedulement proposal to the Bangladesh Bank, it gives more facility than the concerned bank. But in the case of this petitioner, the situation is totally opposite which bears the prima facie arbitrary and malafide conduct of the petitioner. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
18. That the petitioner craves the kindly of this Hon'ble Court for swearing affidavit with the photocopies of all annexures, originals of which are lying with the office of the petitioner. The petitioner is bound to produce the originals of annexures as per the demand of this Hon'ble court.
19. That in view of the above premises, being aggrieved by and dissatisfied with the impugned letter being No. বিআরপিডি(পি-১)/৬৬১/১৩(চ)/২০১৯-৭৫৭১, তারিখ : সেপ্টেম্বর ২৯, ২০১৯ issued by the respondent No. 2 under the signature of the respondent No. 4 whimsically and arbitrarily re-scheduling the loan accounts of the petitioner in derogation of its own policy even after crediting the full amount of down-payment (Annexure- "D") and also there having no other equally effective, adequate and alternative remedy, the petitioner begs to file this writ petition on the following amongst others—

=G R O U N D S=

- I. For that Bangladesh Bank altered the reschedulment proposal unilaterally and arbitrarily without assigning any reason, hearing the concerned bank and the petitioner at all; as such the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
- II. For that when the concerned bank proposed a feasible reschedulment scheme for the petitioner, the central bank cannot change it in such manner thus to make it ineffective, impossible to perform and lead towards defaults. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
- III. For that every decision of the regulatory body should be backed by good reasons. Being the central bank and saviour of monetary policy, Bangladesh Bank should act in a manner which ultimately saves its subjects. Since Bangladesh Bank is providing various types of incentives for decreasing the rates of defaulters, for recovering the loans in long term basis, for bringing the dead loans under management and recovery process, for making the loans more viable and alive, and for activating the economy by engaging all kinds of small, medium and large size entrepreneurs while the conduct of the Bangladesh Bank with the petitioner so far issuing the impugned memo altering the original scheme proposed by the concerned bank is absolutely arbitrary, discriminatory, malafide and opposite to its own policy. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
- IV. For that neither the Bank Company Act 1991 nor the Bangladesh Bank Order 1972 nor any of the master circulars of Bangladesh Bank regarding reschedulment supports the Bangladesh Bank to alter the original reschedulment scheme proposed by the concerned bank in such a manner which is seriously prejudicial, detrimental and rendering the same nonest in reality to perform. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
- V. For that against the arbitrary, discriminatory, malafide and unreasonable treatment of Bangladesh Bank, the petitioner is entitled to seek protection under law from this Honorable Court. The impugned arbitrary conduct of the Bangladesh Bank is violative of the fundamental rights of the petitioner as guaranteed under Article 27, 31, 32 and 42 of the Constitution. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
- VI. For that the original reschedulment scheme of the concerned bank was altered by the Bangladesh in such a manner thus to change the basic structure and purpose of rescheduling the loan and make it impossible to perform for the petitioner, and also becomes non profitable and unworthy for the concerned bank as well. It leaves no option for the concerned bank to think reasonable for the petitioner. It curtails the hands of the concerned bank to do business in more profitable and convenient way. Generally, it is seen that when concerned bank send any reschedulment proposal to the Bangladesh Bank, it gives more facility than the concerned bank. But in the case of this petitioner, the situation is totally opposite which bears the prima facie arbitrary and malafide conduct of the petitioner. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.

- VII. For that on 16.05.209 the Bangladesh Bank issued a provisional circular for reschedulement providing wide facilities for the borrowers - defaulters to reschedule their loans with easy conditions. This circular has also got legality from our Apex Court who has found it legal. Under that circumstances where the petitioner should get more benefits because it paid almost five times more for the reschedulement having adequate collateral securities and well prospect of the business, but the Bangladesh Bank is very arbitrarily depriving him of getting the benefits in which he is by operation of law as well as under the good conscience, equity and justice. This kind of conduct and approach of the Bangladesh Bank towards the petitioner is absolutely arbitrary, malafide, discriminatory, unfair and unreasonable. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.
- VIII. For that the petitioner is carrying out 100% export oriented garments business by setting up its industry in the Adamjee Export Processing Zone (AEPZ). The petitioner has invested more than 500 crore in the aforesaid projects and the current value of the machineries only will be more than 300 crore. The petitioner is one of the important contributory in the AEPZ. If the petitioner is not given with the chance to do business in reasonable way, ultimately the petitioner and its investment in AEPZ shall suffer irreparable loss and injury, which cannot be compensated in terms of money. As such, the impugned letter is liable to be declared to have been issued without lawful authority and is of no legal effect.

WHEREFORE, it is humbly prayed that Your Lordships would graciously be pleased—

- (A) To issue Rule *Nisi* calling upon the respondent Nos. 1-5 to show cause as to why the impugned letter being No. বিআরপিডি(পি-১)/৬৬১/১৩(চ)/২০১৯-৭৫৭১, তারিখঃ সেপ্টেম্বর ২৯, ২০১৯ issued by the respondent No. 2 under the signature of the respondent No. 4 whimsically and arbitrarily re-scheduling the loan accounts of the petitioner in derogation of its own policy even after crediting the full amount of down-payment (Annexure- “D”) shall not be declared to have been done/made illegally, without lawful authority and is of no legal effect;
- (B) And after hearing the parties and the cause shown, if any, make the Rule absolute;
- (C) Pending hearing of the Rule, be pleased to direct the respondents for allowing the petitioner to continue with the repayments as per the re-schedulement scheme as agreed between the petitioner and the pro-forma respondent No. 6 (Annexure- “C”) for ends of justice;

- (D) And pending hearing of the Rule be further pleased to restrain the respondents from sending the name of the petitioner in the CIB Report of Bangladesh Bank;
- (E) And / or pass such other order/orders as your Lordships deem fit and proper.

And for this act of kindness, your petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, U. M. Ashek, son of Abdul Hannan and Mahmuda Begum, Managing Director of M/s. Scandex Knitwear Ltd. (Unit-2), of Plot No. 42-51, Adamjee Export Processing Zone (AEPZ), Shiddhirganj, Narayanganj, permanent address: House No. 9, Road No. 3, Section No. 6, Block-B, Post Office- Mirpur-1216, Mirpur, Dhaka Uttar City Corporation, Dhaka, age about- 56 years, by faith- Muslim, by profession- Business, by Nationality-Bangladeshi, National ID No. 9552941941 do hereby solemnly affirm and say as follows :

01. That I am the Managing Director of petitioner of this Writ Petition and well-conversant with the facts of this case and competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile :

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Direction upon the respondent No. 1 to exercise its jurisdiction as contemplated in section 49(1)(cha) of Bank Companies Act, 1991 against the respondent Nos. 3-4 by disposing of application of the petitioner (Annexure- "H").

AND**IN THE MATTER OF:**

Impugned process of auction scheduled to be held on 15.03.2020 as auction notice published on 13.02.2020 in the daily newspaper namely the Daily Azadi (Annexure “G”) under Section 12(3) of the Artha Rin Adalat Ain, 2003 for selling the schedule property described thereto and thereby violating petitioner’s fundamental rights to hold property as guaranteed under the Constitution of the Peoples’ Republic of Bangladesh.

To

Mr. Justice Syed Mahmud Hossain, the Hon’ble Chief Justice of Supreme Court of Bangladesh and his companion Justices of the said Hon’ble Court.

The humble petition of the petitioner most respectfully—

S H E W E T H

1. That the petitioner is a renowned businessman having business with textiles in various countries. He is a law abiding and peace full citizen of Bangladesh.
2. That the respondent No. 1 is the Bangladesh Bank, the Central Bank of Bangladesh, represented by its Governor, Bangladesh Bank Bhaban, Motijheel Commercial Area, Dhaka, the respondent No. 3 is the Social Islami Bank Limited (SIBL), Corporate Office-City Center, 90/1, Motijeel C/A, Dhaka, represented by its Managing Director and the respondent No. 4 is the Manager, Agrabad Branch, Social Islami Bank Limited of WTC Building (2nd Floor), 102-103, Agrabad C/A, Chittagong.
3. That addresses of the petitioner and respondents given in the cause title are true and correct for the purpose of service of notices, petitions, etc.
4. That the respondent No. 4 bank approved loan to the petitioner vides Sanction Advice being Ref: SIBL/AGB/FEX/2014/6931 dated 11.11.2014. The said loan was subsequently re-scheduled twice in 2015 and 2016 by taking multiple collateral securities including mortgage of valuable land properties, post-dated cheques, personal guarantee and others; but, the entire amount of loan was not properly disbursed to the petitioner. Photocopies of the sanction advices dated 11.11.2014, 19.10.2015 & 23.06.2016 are annexed hereto and marked as **Annexure- “A, A-1 & A-2”**.
5. That the petitioner is a 100% export oriented company. During initial period, the petitioner was always regular in repaying the loan. But, subsequently due to crisis in garments business throughout the world, the petitioner had to lose several purchase orders from the foreign clients. It caused huge business loss to the petitioner, which ultimately late the petitioner on the way of default with the respondent bank. Under the situation, the petitioner requested the concerned bank to restructure and re-finance the loan vide letter

dated 9.12.2018. The petitioner also offered to deposit necessary down payment in this regard. The said proposal was accepted and the petitioner paid necessary down payments. Photocopy of letters dated 9.12.2018 and 27.12.2018 & 20.01.2019 are annexed hereto and marked as **Annexure- “B”, “B-1” & “B-2”**.

6. Thereafter, again on 31.07.2019 the petitioner applied for restructure of loan, and the respondent bank agreed to reschedule the same. Photocopies of several letters between the petitioner and the bank regarding reschedulment are annexed and marked as **Annexure C.**
7. That, thereafter on occasion of default the petitioner applied for reschedulment under the BRPD Circular NO. 5 dated 16.05.2019. Photocopy of the circular is annexed hereto and marked as **Annexure- “D”**.
8. That under the said circular, the petitioner applied for reschedulment. In response, the respondent bank initially requested the petitioner to deposit down-payment amount of 2%. Accordingly, the petitioner deposited the same. Photocopies of email correspondences, letters and bank deposits are annexed hereto and marked as **Annexure- “E”**.
9. That the petitioner continued requesting the respondent bank to reschedule the same by accepting the down payment amount under the said BRPD circular. Photocopies of the letters are annexed hereto and marked as **Annexure- “F”**.
10. That without rescheduling the same, the bank published auction notice under section 12(3) of the Artha Rin Adalat Ain, 2003. Photocopies of the auction notice is annexed hereto and marked as **Annexure- “G”**.
11. That under the circumstances, finding no other alternative the petitioner submitted a representation before the respondent No. 1 on 15.03.2020, but the same met with no reply yet. Receive copy of the letter dated 15.03.2020 is annexed hereto and marked as **Annexure- “H”**.
12. That it is submitted that without rescheduling the loan and responding to the reschedulment application, publication of the auction notice is absolutely illegal and malafide; as such the impugned notice shall liable to be declared to have been done without lawful authority and is of no legal effect.
13. That it is submitted that Bangladesh Bank was established by the Bangladesh Bank Order, 1972 being P.O. 127 of 1972 (P.O No. 127 of 1972) a regularity and a supervising authority of the Banking Companies and Financial Institutions in Bangladesh and is empowered to inquire into and take steps regarding any action and inaction of an banking companies and to protect the rights of the customers of the banking company by taking appreciate steps against the bank company and as such the respondents Nos. 1-2 are required to be directed to exercise its jurisdiction as contemplated in Section 49(1)(cha) of the Bank Companies Act, 1991 against respondent No. 3.
14. That it is submitted that the said auction notice has only been published in a local newspaper which is the violation of section 12(3) of the Artha Rin Adalat Ain, 2003 because auction notice should be published in the nationwide daily newspaper. As such, the impugned auction is liable to be declared to have been done illegally, without lawful authority and of no legal effect.

15. That it is submitted that the action of the respondent Nos. 2-3 is contrary to the banking practice, norms and against the fundamental principle of economic justice and also against the interest of public in general who are doing business with scheduled bank under the supervision and control of Bangladesh Bank and therefore respondent Nos. 1-3 as regulatory is bound by laws to restrain the respondent Nos. 2-3 from doing such illegal activities.
16. That it is submitted that under section 45 of the Bank Companies Act, 1991 Bangladesh Bank may issue directions to the banking company is being conducted in a manner detrimental to interest of public policy or fundamental principles of economic justice guaranteed in our constitution. Therefore, the respondent No. 1 has legal obligation to direct the respondent Nos. 2-3 bank not to proceed with the impugned auction.
17. That it is submitted that the petitioner and the respondent nos. 2-3 is sharing bank-client relationship. In course of business, the borrower may become irregular in repaying the loan since ups and down is the integral part of business. The petitioner has all good intentions to repay the loan as it made several representations requesting the respondents to allow it with reasonable time and also by giving alternative proposals by also by encashing collateral FDR. But the respondent Nos. 2-3 instead of co-operating the petitioner is causing difficulties in the way of raising fund, and as a part of that non co-operation the respondent No. 3 published the impugned auction notice under section 12 of the Artha Rin Adalat Ain, which is absolutely illegal, arbitrary and malafide; as such the same shall be liable to be declared to have been published/done without lawful authority and of no legal effect.
18. That it is submitted that the impugned auction notice have been published by the respondent nos. 2-3 without serving any notice or giving reasonable opportunity of being heard to the petitioner, which is a gross violation of the principal of natural justice and also violative of the fundamental rights of the petitioner's to hold property as guaranteed under Article 31, 32, 40 and 42 of our Constitution. Hence, the impugned process of holding auction of the said property is absolutely illegal, arbitrary, malafide, and the same shall liable to be declared to have been done without lawful authority and of no legal effect.
19. That it is submitted that the petitioner repeatedly requested the respondent No. 3 bank to allow it few months in order to repay the real outstanding dues against the said loan; but the respondent bank without giving it any time and without cooperating it in any manner published the impugned auction notice, which is absolutely illegal, malafide and contrary to the banking practice; and the same shall liable to be declared to have been done without lawful authority and of no legal effect.
20. That the petitioner craves leave of the Hon'ble Court to swear affidavit of this writ petition with the photocopies of the annexures and power of attorney, original of which are remaining of the office of the petitioner. The petitioner assures that the contents of the annexures are true and genuine and the learned Advocate of the petitioner has duly attested those papers.
21. That in the premises aforesaid the petitioners being aggrieved by and dissatisfied with impugned inactions of the respondent No. 2 and finding no other alternative equal, efficacious remedy, the petitioners beg to file this writ petition before this Hon'ble Court on the following amongst others—

G R O U N D S

- I. For that without rescheduling the loan and responding to the reschedulement application, publication of the auction notice is absolutely illegal and malafide; as such the impugned notice shall liable to be declared to have been done without lawful authority and is of no legal effect.
- II. For that Bangladesh Bank was established by the Bangladesh Bank Order, 1972 being P.O. 127 of 1972 (P.O No. 127 of 1972) a regularity and a supervising authority of the Banking Companies and Financial Institutions in Bangladesh and is empowered to inquire into and take steps regarding any action and inaction of an banking companies and to protect the rights of the customers of the banking company by taking appreciate steps against the bank company and as such the respondents Nos. 1-2 are required to be directed to exercise its jurisdiction as contemplated in Section 49(1)(cha) of the Bank Companies Act, 1991 against respondent No. 3.
- III. For that the said auction notice has only been published in a local newspaper which is the violation of section 12(3) of the Artha Rin Adalat Ain, 2003 because auction notice should be published in the nationwide daily newspaper. As such, the impugned auction is liable to be declared to have been done illegally, without lawful authority and of no legal effect.
- IV. For that the action of the respondent Nos. 2-3 is contrary to the banking practice, norms and against the fundamental principle of economic justice and also against the interest of public in general who are doing business with scheduled bank under the supervision and control of Bangladesh Bank and therefore respondent Nos. 1-3 as regulatory is bound by laws to restrain the respondent Nos. 2-3 from doing such illegal activities.
- V. For that under section 45 of the Bank Companies Act, 1991 Bangladesh Bank may issue directions to the banking company is being conducted in a manner detrimental to interest of public policy or fundamental principles of economic justice guaranteed in our constitution. Therefore, the respondent No. 1 has legal obligation to direct the respondent Nos. 2-3 bank not to proceed with the impugned auction.
- VI. For that the petitioner and the respondent nos. 2-3 is sharing bank-client relationship. In course of business, the borrower may become irregular in repaying the loan since ups and down is the integral part of business. The petitioner has all good intentions to repay the loan as it made several representations requesting the respondents to allow it with reasonable time and also by giving alternative proposals by also by enchasing collateral FDR. But the respondent Nos. 2-3 instead of co-operating the petitioner is causing difficulties in the way of raising fund, and as a part of that non co-operation the respondent No. 3 published the impugned auction notice under section 12 of the Artha Rin Adalat Ain, which is absolutely illegal, arbitrary and malafide; as such the same shall be liable to be declared to have been published/done without lawful authority and of no legal effect.
- VII. For that the impugned auction notice have been published by the respondent nos. 2-3 without serving any notice or giving reasonable opportunity of being heard to the petitioner, which is a gross violation of the principal of natural justice and also violative of the fundamental rights of the petitioner's to hold property as guaranteed under Article 31, 32, 40 and 42 of our Constitution. Hence, the impugned process of holding auction of the

said property is absolutely illegal, arbitrary, malafide, and the same shall liable to be declared to have been done without lawful authority and of no legal effect.

- VIII. For that the petitioner repeatedly requested the respondent No. 3 bank to allow it few months in order to repay the real outstanding dues against the said loan; but the respondent bank without giving it any time and without cooperating it in any manner published the impugned auction notice, which is absolutely illegal, malafide and contrary to the banking practice; and the same shall liable to be declared to have been done without lawful authority and of no legal effect.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to :

- (A) To issue Rule *Nisi* calling upon the respondents to show cause as to why the respondent No. 1 shall not be directed to exercise its jurisdiction as contemplated in section 49(1)(cha) of Bank Companies Act, 1991 in disposing of the letter of the petitioner lying with the respondent Nos. 3-4 (Annexure “H”) and why the impugned process of auction scheduled to be held on 15.03.2020 as auction notice published on 13.02.2020 in the daily newspaper namely the Daily Azadi (Annexure “G”) under Section 12(3) of the Artha Rin Adalat Ain, 2003 for selling the schedule property described thereto and thereby violating petitioner’s fundamental rights to hold property as guaranteed under the Constitution of the Peoples’ Republic of Bangladesh shall not be declared to have been done/carried out illegally, without lawful authority and of no legal effect;
- (B) After hearing the parties and perusing the cause shown, if any, make the Rule absolute;
- (C) Pending hearing of the Rule, be further pleased to stay the impugned process of auction scheduled to be held on 15.03.2020 as auction notice published on 13.02.2020 in the daily newspaper namely the Daily Azadi (Annexure “G”) under Section 12(3) of the Artha Rin Adalat Ain, 2003 for selling the schedule property described thereto;
- (D) Pass such other or further order or orders as to your Lordships may seem fit and proper.

And for this act kindness, the petitioners as in duty bound shall ever pray.

AFFIDAVIT

I, Abdul Alim, son of Mohammad. Halim and Zabun Nesa, Managing Director of YZ Textile Limited, of House # 15/C, Road # 05, Khulshi Residential Area, P.S. Khulshi, Chittagong, aged about- 54 years, by faith Muslim, by occupation- Business, by nationality Bangladeshi having National ID No. 1594308702704, do hereby solemnly affirm and say as follows :

01. That I am the petitioner of this writ petition and fully acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership # 6731
Hall Room No. 2, Supreme
Court Bar Association Building
Mobile :

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. _____ OF 2019

IN THE MATTER OF :

An application under Article 102 of Constitution of the People's Republic of Bangladesh.

AND**IN THE MATTER OF :**

Md. Akkas Ali Khandakar, son of late Md. Tamiz Uddin Khandakar, of Jarun, Post Office and Police Station- Joydebpur, District- Gazipur.

----- **Petitioner.**

-VERSUS-

1. Land Appeal Board, Branch No. 3, of 2nd 12 storied Government Building, Level- 8, Segunbagicha, Dhaka, represented by its Chairman.
2. The Chairman, Land Appeal Board, Branch No. 3, of 2nd 12 storied Government Building, Level- 8, Segunbagicha, Dhaka.
3. The Additional Divisional Commissioner (Revenue), Division- Dhaka, of Segunbagicha, Dhaka.
4. The Deputy Commissioner, Office of Deputy Commissioner, Gazipur.
5. The Additional Deputy Commissioner (Revenue), Office of Deputy Commissioner, Gazipur.
6. The Revenue Deputy Collector, Office of Deputy Commissioner, Gazipur.

----- **Respondents.**

AND**IN THE MATTER OF:**

Order dated 3.12.2019 passed by the respondent No. 1 in case No. 3-20/2009 (name) appeal, Gazipur rejecting the application of the petitioner dated 12.11.2019 (Annexure- G).

AND**IN THE MATTER OF:**

Action of the respondents to evict the petitioner from their land situated at District- Dhaka (old), at present- Gazipur, P.S.- Savar (old), at present- Gazipur Sadar, Mouja- Mirpur, J.L. No. 536 (old), at present- 51, S.A. and R.S. Khatian No. 1, C.S. and S.A. Plot No. 676, land measuring 2 acre wherein they are the legal occupants.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That the petitioner is law abiding, peace loving and permanent citizen of Bangladesh.
2. That the respondent No. 1 is the
3. That the addresses given in the cause title are correct addresses for the purpose of service of serving notice etc., upon the parties.
4. That the petitioner and his sister became the owner of the land situated in the “District- Dhaka (old), at present- Gazipur, P.S.- Savar (old), at present- Gazipur Sadar, Mouja- Mirpur, J.L. No. 536 (old), at present- 51, S.A. and R.S. Khatian No. 1, C.S. and S.A. Plot No. 676, land measuring 2 acre” by way of purchase by his late father Md. Tamij Uddin Khandaker, son of late Ain Uddin Khandaker from the earlier CS recorded owner. His father's name was duly recorded in the CS Khatian. Subsequently, when the land incorrectly recorded in the name of the Government, his father filed Title Suit No. 105 of 1977 against the Government and obtained exparte decree which was never challenged by any party. Photocopy of the CS record, order sheet of title suit, plaint, deposition of witness and decree are annexed hereto and marked as **Annexure- “A, A-1, A-2, A-3 and A-4”**.
5. That on 23.08.1982 the late father of the petitioner namely Md. Tamij Uddin Khandaker was served with a notice by the Circle Officer, Joydebpur, Gazipur to pay revenue to the Government against the said land. The petitioner and his sister are enjoying the peaceful ownership and possession of the land by paying necessary Government charges including revenue, electricity bill, gas, water and others. Photocopy of some recent copy of bill is annexed hereto and marked as **Annexure- “B”**.
6. That the ownership and possession of the petitioner through his father was never disputed by any, however for correction of mutation the petitioner filed Misc. Case No. 127 of 2014 which was disallowed by the Additional District Commissioner (Revenue), Gazipur vide order dated 3.10.2016. Certified copy of the order dated 3.10.2016 is annexed hereto and marked as **Annexure- “C”**.

7. That against the said order, the petitioner filed Revision Case No. 84 of 2017 before the Additional Divisional Commissioner (Revenue), Dhaka which was disallowed to vide order dated 26.11.2018. Certified copy of the order dated 26.11.2018 is annexed hereto and marked as **Annexure- “D”**.
8. That against the said order, the petitioner filed Appeal No. 3-20 of 2009 (Gazipur) before the Land Appeal Board, Dhaka which is now pending. Certified copy of the plaint is annexed hereto and marked as **Annexure- “E”**.
9. That during pendency of the appeal, the Land Appellate Board was pleased to stay the earlier orders passed by the ADC (revenue) vide order dated 12.06.2019. Certified copy of the order dated 12.06.2019 is annexed hereto and marked as **Annexure- “F”**.
10. That under the circumstances, suddenly on 3.11.2019, some of the officers of the respondents came to the place of the petitioner and threatened them for eviction. Being aggrieved thereby the petitioner filed an application for stay before the Land Appeal Board. Subsequently, on 15.12.2019 the petitioner was served with a notice of eviction though in the notice neither the petitioner nor his father was named. However, some of the officers of the respondents again came to the house of the petitioner and warned them to leave the place within seven days. The petitioner requested that since the matter is sub-judice and they obtained title by way of court decree, therefore they should not be treated as illegal occupant and they should not be evicted. Meanwhile, the application for stay filed by the petitioner was rejected by the Land Appeal Board vide order dated 3.12.2019. Certified copy of the order dated 3.12.2019 and photocopy of the notice dated 15.12.2019 is annexed hereto and marked as **Annexure- “G and G-1”**.
11. That thereafter on 18.12.2019 the petitioner again requested the Deputy Commissioner, Gazipur to stop the eviction process so far relating to the land of the petitioner, but the same also met with no result. Photocopy of the letter dated 18.12.2019 is annexed hereto and marked as **Annexure- “H”**.
12. That it is submitted that though the petitioner was not named in the eviction notice, but in the eviction notice the land of the petitioner was included without demarcating the legal or illegal occupants. As such, the impugned action of eviction shall liable to be declared to have been done illegally, without lawful authority and is of no legal effect.
13. That it is submitted that the ভূমি ও ইমারত (দখল ও পুনরুদ্ধার) অধ্যাদেশ, ১৯৭০ is only applicable to the illegal occupants, but here the petitioner is not an illegal occupant. As such, As such, the impugned action of eviction shall liable to be declared to have been done illegally, without lawful authority and is of no legal effect.
14. That it is submitted that before taking step/action of eviction, the respondents did not make any differentiation or demarcation between the lawful occupants or illegal occupants or illegal occupants. As such, the impugned decision of demarcation is absolutely illegal, arbitrary, malafide and unreasonable for ends of justice.
15. That it is submitted that before taking such illegal action, the petitioner was not given any show-cause notice or personal opportunity of being heard. As such, the impugned action of eviction shall liable to be declared to have been done illegally, without lawful authority and is of no legal effect.

16. That it is submitted that Land Appeal Board absolutely failed to consider that during the pendency of case before them, the petitioner should not be evicted. The Board should have at least granted an order of status-quo. But the Board failed to do so. As such, the impugned action of eviction shall liable to be declared to have been done illegally, without lawful authority and is of no legal effect.
17. That the petitioner craves the kindly of this Hon'ble Court for swearing affidavit with the photocopies of all annexures, originals of which are lying with the office of the petitioner. The petitioner is bound to produce the originals of annexures as per the demand of this Hon'ble court.
18. That in view of the above premises, there having no other equally effective, adequate and alternative remedy, the petitioner beg to file this writ petition on the following amongst other-

=G R O U N D S=

- I. For that though the petitioner was not named in the eviction notice, but in the eviction notice the land of the petitioner was included without demarcating the legal or illegal occupants. As such, the impugned action of eviction shall liable to be declared to have been done illegally, without lawful authority and is of no legal effect.
- II. For that the ভূমি ও ইমারত (দখল ও পুনরুদ্ধার) অধ্যাদেশ, ১৯৭০ is only applicable to the illegal occupants, but here the petitioner is not an illegal occupant. As such, As such, the impugned action of eviction shall liable to be declared to have been done illegally, without lawful authority and is of no legal effect.
- III. For that the petitioner got the ownership and possession of the said land by way of decree from the Court which has not been challenged by anyone, and no appeal was filed against said decree. As such, the impugned action of eviction shall liable to be declared to have been done illegally, without lawful authority and is of no legal effect.
- IV. For that since regarding the land in question a case is pending before the Land Appeal Board; as such the matter falls such-judice; under the circumstances, the petitioner should be evicted. As such, the impugned action of eviction shall liable to be declared to have been done illegally, without lawful authority and is of no legal effect.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to :

- (A) To issue Rule *Nisi* calling upon the respondents to show cause as to why the impugned Order dated 3.12.2019 passed by the respondent No. 1 in case No. 3-20/2009 (name) appeal, Gazipur rejecting the application of the petitioner dated 12.11.2019 (Annexure- G) and why the impugned action of

the respondents to evict the petitioner from their land situated at District- Dhaka (old), at present- Gazipur, P.S.- Savar (old), at present- Gazipur Sadar, Mouja- Mirpur, J.L. No. 536 (old), at present- 51, S.A. and R.S. Khatian No. 1, C.S. and S.A. Plot No. 676, land measuring 2 acre wherein they are the legal occupants shall not be declared to have been passed and done without lawful authority and are of no legal effect;

- (B) After hearing the parties and perusing the cause shown, if any, make the Rule absolute.
- (C) Pending hearing of the Rule, be further pleased to direct the parties to maintain status quo in respect of the land of the petitioner situated at District- Dhaka (old), at present- Gazipur, P.S.- Savar (old), at present- Gazipur Sadar, Mouja- Mirpur, J.L. No. 536 (old), at present- 51, S.A. and R.S. Khatian No. 1, C.S. and S.A. Plot No. 676, land measuring 2 acre for ends of justice;
- (E) Pass such other or further order or orders as to your Lordships may seem fit and proper.

And for this act of kindness, your petitioner as in duty bound shall ever pray.

A F F I D A V I T

I,, aged aboutyears, by faith- Muslim, by Profession- Farmer, by Nationality- Bangladeshi, National ID No. do hereby solemnly affirm and say as follows—

- 01. That I am the petitioner of this Writ Petition and well-conversant with the facts of this case and competent to swear this Affidavit.
- 02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)
Advocate

DEPONENT

The deponent is known to me
and identified by me.

Solemnly affirmed before me by
 said deponent at the Supreme
 Court premises, Dhaka on
 this theth day of, 201
 at A.M./P.M.

(Shahadat Hossain)
 Advocate
 Membership # 6731
 Hall Room No. 2, Supreme
 Court Bar Association Building
 Mobile : 01717041929

**COMMISSIONER OF AFFIDAVITS
 SUPREME COURT OF BANGLADESH
 HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
 HIGH COURT DIVISION
 (SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. OF 2016

IN THE MATTER OF :

An application under Article 102(2)(b)(i) read with
 Article 44 of Constitution of the People's Republic of
 Bangladesh.

AND

IN THE MATTER OF :

Md. Zahed Ullah, son of late Md. Nurul Hoque and late
 Jahanara Begum, of of House- Chairman Bari, Village-
 Purba Toitong, Bazar Para, Toitong, Post Office-
 Toitong-4541, Pekua, Cox Bazar.

----- **Petitioner.**

-V E R S U S-

1. The Government of People's Republic of
 Bangladesh, represented by its Secretary of
 Ministry of Home Affairs, Bangladesh
 Secretariate, Dhaka.

2. Inspector General of Police, Bangladesh Police, Police Headquarters, Police Bhaban, Abdul Gani Road, Ramna, Dhaka.
3. Deputy Commissioner, Office of Deputy Commissioner, Cox Bazar.
4. Director General (DG), Rapid Action Battalion (RAB), Headquarters, RAB, Uttara, Dhaka.
5. Head of Rapid Action Battalion-7, Cox Bazar.
6. Additional Deputy Inspector General (DIG), Chittagong Range, Bangladesh Police.
7. Additional Superintendent of Police (SP), Chittagong Range, Bangladesh Police.
8. Officer-In-Charge, Police Station- Pekua, Cox Bazar.
9. Zahedul Islam Chowdhury, son of late Nurul Islam Chowdhury, of Village- Pandit Para, Toitong, Pakua, Cox Bazar.

----- **Respondents.**

AND

IN THE MATTER OF :

Md. Shahidllah, son of late Md. Nurul Hoque, of House-Chairman Bari, Village- Purba Toitong, Bazar Para, Toitong, Post Office- Toitong-4541, Pekua, Cox Bazar, Date of Birth- 25 October 1973, Nationality- Bangladeshi, National ID No. 2215696308533.

.....**Detenu.**

AND

IN THE MATTER OF :

For the enforcement of fundamental rights guaranteed under Article 31, 32 and 44 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

For direction upon the respondents to bring the detenu before the Hon'ble Court so as to satisfy itself that the detenu is not being held in custody without lawful authority or in an unlawful manner.

To

Mr. Justice Surendra Kumar Sinha, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That the petitioner is a brother and voter of the aforesaid detenu Mr. Md. Shahidllah, son of late Md. Nurul Hoque, of House- Chairman Bari, Village- Purba Toitong, Bazar Para, Toitong, Post Office- Toitong-4541, Pekua, Cox Bazar, Date of Birth- 25 October 1973, Nationality- Bangladeshi, National ID No. 2215696308533. He is a candidate for the post of Chairman in Toitong Union Parishad Election, Union- 2, Cox Bazar. The election is going to be held on 31.03.2016. He was Chairman for twice earlier from the same union from 1997-2003 & 2003-2011. He was the General Secretary of Bangladesh Chattraleague Toitong High School from 1988-1989, Library & Publication Secretary of Bangladesh Chattraleague Intermediate Branch of Chakoria College from 1990-1991, Library & Publication Secretary of Bangladesh Chattraleague of Chakoria College from 1991-1993, Organizing Secretary of Bangladesh Chattraleague of Chakoria Upazilla from 1994-1998, General Secretary of Bangladesh Awameleagae, Toitong Union Parishad from 1998-2001, Joint Convenor of Pekua Upazilla Awameleagae from 2001-2004, First Joint Secretary of Bangladesh Awameleagae in Pekua Upazilla from 2004-2013, Vice President Bangladesh Awameleagae in Pekua Upazilla from 2013-2016 and others. He is also involved with a number of social welfare activities, development projects, charitable organizations and others. Photocopy of his National ID is annexed hereto and marked as **Annexure- "A"**.
2. That the respondent No. 1 is the Government of People's Republic of Bangladesh, represented by its Secretary of Ministry of Home Affairs, Bangladesh Secretariate, Dhaka, the respondent No. 2 is the Inspector General of Police, Bangladesh Police, Police Headquarters, Police Bhaban, Abdul Gani Road, Ramna, Dhaka, the respondent No. 3 is the Deputy Commissioner, Office of Deputy Commissioner, Cox Bazar, the respondent No. 4 is the Director General (DG), Rapid Action Battalion (RAB), Headquarters, RAB, Uttara, Dhaka, the respondent No. 5 is the Head of Rapid Action Battalion-7, Cox Bazar, the respondent No. 6 is the Additional Deputy Inspector General (DIG), Chittagong Range, Bangladesh Police, the respondent No. 7 is the Additional Superintendent of Police (SP), Chittagong Range, Bangladesh Police, the respondent No. 8 is the Officer-In-Charge, Police Station- Pekua, Cox Bazar and the respondent No. 9 is the Zahedul Islam Chowdhury, son of late Nurul Islam Chowdhury, of Village- Pandit Para, Toitong, Pakua, Cox Bazar.
3. That the addresses given in the cause title are correct addresses for the purpose of service of serving notice etc., upon the parties.
4. That the detenu is contesting as an independent candidate for the post of Chairman in Toitong Union Parishad Election, Union-2, Cox Bazar. The election is scheduled to be held on 31.03.2016. Photocopies of his nomination paper, money receipt and poster are annexed hereto and marked as **Annexure- "B" Series**.

5. That it is stated that the detenu is a local leader supporting the political group Bangladesh Awameleague. Earlier he was elected as Chairman for twice from the same union. This time he did not get nomination from Bangladesh Awameleague. Thereby, he contested in the election as an independent candidate. He has vast supports in his locality and there is a fair chance of his wining in the election. Since the election process has started, the respondent No. 9 has continued to threat the detenu for standing aside and withdraw his nomination paper. The respondent No. 9 and his companions were attacking the supporters of the detenu and also threatening them to stop election campaign. But, the detenu having massive public support has continued his election campaign.
6. Under the circumstances, being failed to stop the detenu from taking part in the election the respondent No. 9 with his miscreant fellows with heavy arms and weapons abducted the detenu on 29.09.2016 at 10:30 pm while the detenu was returning from a street-campaign of his election from Toitong Bonkanon Bazar. The companions of the detenu were tried to prevent them from abducting the detenu but on the face of heavy attack with dangerous arms and weapons they failed to save the detenu. Immediately after that, the supporters of the detenu communicated with the local law enforcing agencies, Police, RAB; but they did not pay any heed and did not took any prompt initiative for looking for the detenu. The said matter was also informed to the Returning Officer on 30.03.2016. This event was widely circulated in electronic media including channel Ekattor, ATN News, BD News, Independent Television etc. Thereafter, from the morning on 30.03.2016 the family members along with the supporters of detenu tried to lodge a case with Pekua Police Station, but the concerned Officer-In-Charge did not register the case till late evening, and now they are refusing to produce an copy of FIR. Still the law enforcing agencies have not taken any positive and effective step for recovering the detenu. Photocopies of the letters to the Returning Officer and election commission are annexed hereto and marked as **Annexure- “C” & “C1”**.
7. That it is stated that the petitioner is a candidate for the post of Chairman in Toitong Union Parishad Election from Union No. 2 in upcoming election as scheduled to be held on 31.03.2016. He was Chairman earlier twice from 1997-2003 & 2003-2011. He is a very popular person in his locality. This year he is contesting the election as an independent candidate being highly persuaded/motivated by the people from his locality. He is not involved with any bad politics. There is no case pending against him. He has a very good chance of winning in the election. The respondent No. 9 is well aware about this fact, and earlier he threaten the detenu for withdrawal his nomination paper. The respondent No. 9 is a nominated candidate from Bangladesh Awamileage, and he is involved with cadre politics. He always wanted to restrain the detenu from participating the upcoming the union parishad election.
8. That it is submitted that when it is prima-facie evident that the detenu has been abducted by the respondent No. 9 through his miscreants and there is direct/definite allegation against him, and the law enforcing agencies-respondents were duly informed; the inaction of the respondents for looking for/recovering the detenu is absolutely illegal, malafide and arbitrarily; as such the respondents may kindly be directed to bring the detenu before this Hon’ble Court.

9. That it is submitted that the local law enforcing agencies were duly informed about the abduction of the detenu and there is specific allegation against the respondent No. 9 and his along with his miscreants, but the law enforcing agencies did not took any effective steps looking for the detenu, rather they kept silent and did not register the case till late evening on 30.03.2016, which is absolutely illegal, malafide and arbitrarily; as such the respondents may kindly be directed to bring the detenu before this Hon'ble Court.
10. That it is submitted that the local enforcing agencies the collusion with the respondent No. 9 is not take any steps for recovering the detenu, which is absolutely illegal, malafide and arbitrarily; as such the respondents may kindly be directed to bring the detenu before this Hon'ble Court.
11. That it is submitted that the detenu is now 43 years old and he has 2 (two) minor children. After his abduction his family members, friends, relatives and his supporters are facing turmoil. The respondent No. 9 being failed to stop the detenu from taking part in this election, he abducted the detenu, which is absolutely illegal, malafide and arbitrarily; as such the respondents may kindly be directed to bring the detenu before this Hon'ble Court.
12. That the petitioner undertakes that this writ petition or alike was not been moved before any other Bench of this Hon'ble Court earlier. This writ petition is fresh and has been filed for the first time.
13. That the petitioner craves leave of the Hon'ble Court to swear affidavit with photocopies of the annexures, original copies of which are remained with the office of the respondents and they shall be bound to produce original copies as per order of this Hon'ble Court. The petitioner undertakes that the photocopies annexures are to reflection of the original copies.
14. That in view of the above premises, being aggrieved by and dissatisfied with the illegal detention of the detenu and thereby for the enforcement of fundamental rights guaranteed under Article 31, 32 and 44 of the Constitution of the Peoples Republic of Bangladesh and also there having no other equally effective, adequate and alternative remedy, the petitioner begs to file this writ petition on the following amongst others—

=G R O U N D S=

- I. For that when it is prima-facie evident that the detenu has been abducted by the respondent No. 9 through his miscreants and there is direct/definite allegation against him, and the law enforcing agencies-respondents were duly informed; the inaction of the respondents for looking for/recovering the detenu is absolutely illegal, malafide and arbitrarily; as such the respondents may kindly be directed to bring the detenu before this Hon'ble Court.
- II. For that the local law enforcing agencies were duly informed about the abduction of the detenu and there is specific allegation against the respondent No. 9 and his along with his miscreants, but the law enforcing agencies did not took any effective steps looking for the detenu, rather they kept silent and did not register the case till late evening on 30.03.2016, which is absolutely illegal, malafide and arbitrarily; as such the respondents may kindly be directed to bring the detenu before this Hon'ble Court.

- III. For that the local enforcing agencies the collusion with the respondent No. 9 is not take any steps for recovering the detenu, which is absolutely illegal, malafide and arbitrarily; as such the respondents may kindly be directed to bring the detenu before this Hon'ble Court.
- IV. For that the detenu is now 43 years old and he has 2 (two) minor children. After his abduction his family members, friends, relatives and his supporters are facing turmoil. The respondent No. 9 being failed to stop the detenu from taking part in this election, he abducted the detenu, which is absolutely illegal, malafide and arbitrarily; as such the respondents may kindly be directed to bring the detenu before this Hon'ble Court.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to :

- (A) To issue Rule *Nisi* calling upon the respondents to show cause as to why the detenu shall not be brought before the Hon'ble Court so as to satisfy itself that the detenu was not being held in custody without lawful authority or in an unlawful manner;
- (B) After hearing the parties and perusing the cause shown, if any, make the Rule absolute;
- (C) Pending hearing of the Rule, be further pleased to direct the respondents for bringing/presenting the detenu before this Hon'ble Court within such time as Your Lordships may deem fit and proper for ends of justice;
- (D) Pass such other or further order or orders as to your Lordships may seem fit and proper.

And for this act of kindness, your petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Mohammad Enamul Hoque, son of Mohammad Serajul Islam and Monowara Begum, of House- Waz Khatun Baper Bari, Village- Battali, Waz Khatun Para, Toitong, Post Office- Toitong- 4641, Shequa, Cox Bazar, aged about- 43 years, occupation – Advocacy, by faith- Muslim, by Nationality- Bangladeshi, National ID No. 2215696307845 do hereby solemnly affirm and say as follows :—

- 01. That I am the petitioner of the this Writ Petition and well-conversant with the facts of this case and competent to swear the Affidavit.
- 02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Imdadul Hoque)

Advocate

DEPONENT

The deponent is known to me
identified by me.

Solemnly affirmed before me by the said at
the Supreme Court premises, Dhaka on this
the.....th day of,2016 at
.....A.M/P.M.

(Imdadul Hoque)

Advocate

Membership No. 31234

Hall Room No. 2,

SCAB, Ramna, Dhaka,

Mobile No. 01711404789.

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. _____ OF 2021.

IN THE MATTER OF :

An application under Article 102 of the Constitution of
the People's Republic of Bangladesh.

AND

IN THE MATTER OF :

Md. Shahab Imon, son of late Abdus Sattar, Managing
Director, P.P. Builders and Engineers Limited (PPEL),
of House No. 127 (6th floor), Road No. 10, Block- C,
Niketan, Gulshan- 1, Dhaka.

----- **Petitioner.**

–Versus–

1. The Learned Judge, Artha Rin Adalat No. 2, Dhaka.
2. Marine Bank Limited, Dhanmondi Branch, represented by its Manager, SIMA Blossom (1st floor), House No. 9, Road No. 10 (New), 07 (Old), Dhanmondi R/A, Dhaka, having its Head Office at 39, Dilkusha Commercial Area, Police Station- Motijheel, District- Dhaka.

..... **Respondents.**

AND**IN THE MATTER OF:**

Order Nos. 39 and 40 dated 05.11.2019 and 30.01.2020, respectively passed by the learned Judge, Artha Rin Adalat No. 2, Dhaka in Artha Rin Suit No. 1155 of 2016 shifting from its earlier No. 33 dated 10.04.2019 unilaterally sending the Letter of Guarantee only for expert opinion in lieu of all security documents as mentioned paragraph 13 page 13 of the plaint.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the petitioner above-named most respectfully—

S H E W E T H :

1. That the petitioner is a peace loving and permanent citizen of Bangladesh.
2. That the respondent No. 1 is the Learned Judge, Artha Rin Adalat No. 2, Dhaka and the respondent No. 2 is the Marine Bank Limited, Dhanmondi Branch, represented by its Manager, SIMA Blossom (1st floor), House No. 3, Road No. 16 (New), 27 (Old), Dhanmondi R/A, Dhaka, having its Head Office at 61, Dilkusha Commercial Area, Police Station- Motijheel, District- Dhaka.
3. The addresses of the respondents given in the cause title are corrected addresses for purpose of issuing summons/ notices upon them.
4. That it is stated that the respondent No. 2 filed the Artha Rin Suit No. 1155 of 2016 for recovery of an amount of loan Tk. 20,47,69,664.95/- (Taka Twenty Core Forty Seven Lac Sixty Nine Thousand Six Hundred Sixty Four and Nine Five Paisa) only against the petitioner and others. Certified copy of the plaint is annexed hereto and marked as **Annexure- "A"**.

5. That it is stated that in the plaint, this petitioner is made as the defendant No. 2 as borrower and guarantor against the loan in question. In the recital (paragraph 3 of the plaint), this writ petitioner is shown as the Managing Director of P.P. Builders and Engineers Ltd. and Lead Partner of the defendant No. 1 as well as borrower and personal guarantor. In paragraph 4 it is stated that on the basis of agreement dated 9.01.2011 the defendant No. 2 opened an account being No. 010233300024857 with the bank under name and style 'PPEL-SHIKOH (JV)'. However, it is very much admitted in the paragraph Nos. 6 and 7 that the defendant No. 3 on 4.10.2011 requested the plaintiff bank for sanctioning of performance of guarantee with working capital and the defendant No. 3 applied for the credit facilities; basing on which the loan was granted. It is further stated in paragraph No. 9 of the plaint that this petitioner (defendant No. 2) opened an account being No. 010211100024857 with the Bank under name and style "PPEL-SHIKOH (JV)". In paragraph No. 8 it is stated that the sanction advice was unconditionally accepted by the defendant Nos. 2 and 1 who enjoyed the credit facilities. It is further stated in paragraph No. 8 that the defendant No. 2 on 02.11.2011 vide a letter acknowledged the loan liability, and he also executed an irrevocable general power attorney authorizing the plaintiff-bank to collect payment of bills from the office of the Local Government Engineering Department, Narsingdi. It is also stated in paragraph Nos. 9 and 11 that on 04.12.2011 the defendant No. 2 requested the defendant No. 9 to accept the power of attorney dated 27.11.2011; and on 02.07.2013 the defendant No. 2 also requested the plaintiff Bank for enhancement of the existing SOD (WO) facility; that considering the request the plaintiff Bank enhanced the SOD (WO) facility from Tk. 1,346.34 lac to Tk. 1646.34 lac vide its sanction Letter No. PPEL/DHAN/Credit/2013/1008 dated 05.08.2013; that the defendant accepted the said sanction letter unconditionally; that for securing the said credit facility the defendants executed various charge documents and personal guarantee. Photocopies of the relevant firstly documents with the plaint are annexed hereto and marked as **Annexure- "B"**.
6. That it appears from the firstly documents that the notification of award was issued on 3.10.2011 in the name of PPEL-SHIKOH (JV), House # 459, Road # 31, New DOHS, Mohakhali, Dhaka- 1206. On 4.10.2011, Mr. Khalil Uddin (the defendant No. 3) applied to respondent No. 2 for sanction of performance guarantee admitting that 97% of the Work will be owned by M/s. Subir Trading Corporation. It is stated there "*It is specially mention here that as per Sub-contract Agreement & as per Standing Instruction of the company 97% money of the cheque will be transferred in the account of M/S. Subir Trading Corporation & as such 97% share of work order will be the owner of M/S. Subir Trading Corporation. So our goodself earnestly requested out of 97% share against the work order, 40% working capital may kindly be sanctioned in the name of M/S. Subir Trading Corporation*". On the basis of the application, the bank issued sanction advice on 1.12.2011 addressing "*Md. Mohiuddin (Moin), lead partner: PPEL-Shikoh Joint Venture, House # 459 (2nd Floor), Road # 31, New DOHS, Mohakhali, Dhaka*". It is shown in the sanction advice that it was accepted by this writ petitioner; but in reality, he did not accept the same. The writ petitioner disowns his signatures-like on it. It also appears from a letter dated

4.12.2011 submitting by the Executive Engineer, LGED, Narsingdi that all works and payments against the works were made on the basis of power given to the defendant No. 3. Subsequently, SOD was enhanced on 5.08.2013 and additional loan was sanctioned on 17.05.2015 which do not contain the signature of the petitioner. Nevertheless, in the balance confirmation slip dated 30.09.2012, demand promissory note dated 2.11.2011, letter of arrangement dated 2.11.2011, letter of authority dated 2.11.2011, letter of disbursement dated 2.11.2011, letter of continuity dated 2.11.2011, letter of revival dated 2.11.2011, supplementary agreement for letter of hypothecation dated 2.11.2011, general counter guarantee dated 2.11.2011, letter of guarantee dated 2.11.2011, the signature of the petitioner is mentioned. But, in fact, the petitioner never signed any of those documents. All his signatures had been forged by the defendant No. 3 in connivance with his allied group. The petitioner did not execute any mortgage or power of attorney deed. It also appears from the subsequent documents, the bank time to time communicated their information with the defendant No. 3.

7. That the petitioner never signed any of the loan or security documents because there was no scope for it which is clearly apparent from the firstly documents signed by the defendant No. 9. Because, on 26.10.2011, they authorized the defendant No. 3 (Mr. Khalil Uddin, Proprietor of M/S. Subir Trading Corporation) to take exclusive control, charge, benefit and interest of the work order and to do the needful. It is more like taking 100% ownership by the defendant No. 3 from the defendant Nos. 1-2. The idea of taking loan, thereby obtaining loan and all subsequent affairs were done by the defendant No. 3. This petitioner has no involvement with it. Subsequently, long after 4-5 years when the defendant No. 3 became defaulter in completing work/project in question. Only then the petitioner entered into, and in order to avoid block by LGED under public procurement rules to participate in the tender process cancelled all dealings with the defendant No. 3 and completed the remaining work at his own expenditure incurring huge loss thereby. For ready reference, photocopies of all the firstly documents signed by the defendant No. 9 (stricken out) are annexed hereto and marked as **Annexure- "C"**.
8. That under the circumstances, when the plaintiff filed the Artha Rin Suit, the defendant Nos. 1-2 became very frustrated knowing about the suit, because the defendant Nos. 1-2 had no knowledge about it since the defendant No. 3 was the ultimate authority and responsible person to complete with work. The defendant Nos. 1-2 are contesting the suit by filing written statement. The defendant also filed supplementary written statement. Photocopies of the written statement and supplementary written statement are annexed hereto and marked as **Annexure- "D and D-1"**.
9. That the petitioner disowned all his signatures in the loan related documents. Therefore, he prayed for expert verification of those signatures. Photocopy of the application is annexed hereto and marked as **Annexure- "E"**.
10. That the said application was allowed by the learned Artha Rin Adalat, No. 2, Dhaka vides order No. 33 dated 10.04.2019 in respect of all loan related documents including collateral security instruments. The petitioner prayed for examination of all documents as mentioned

in para 13 page 13 of the plaint and the same was allowed by the learned court. But subsequently, when the documents were sent for expert verification, only the letter of guarantees were sent for verification vide order No. 40 dated 30.01.2020 in light of order No. 39 dated 3.11.2019, which is absolutely illegal, arbitrary and malafide. These are the impugned orders in this writ petition. Certified copy of the relevant order sheet is annexed hereto and marked as **Annexure- "F"**.

11. That the said letter of guarantee as sent for expert verification was subsequently submitted by the bank keeping original copies of all other documents as mentioned in paragraph 13 of the plaint and acknowledgement letter dated 2.11.2011 as mentioned in paragraph 8 of the plaint. Photocopy of the firstly containing letter of guarantee is annexed hereto and marked as **Annexure- "G"**.
12. That after examination, the expert submitted opinion but the expert opinion is very defective because the petitioner admitted his signature in the power of attorney by which the defendant No. 3 was given full authority in respect of the work/project but the expert opinion says the signature of the petitioner is forged thereon. On the other hand, the petitioner disowns his signature on letter of guarantee but the expert opinion came against. Photocopy of the expert opinion is annexed hereto and marked as **Annexure- "H"**.
13. That against the said defective report, the defendant No. 2 filed written objection containing the illegalities and discrepancies made in the report. Photocopy of the objection is annexed hereto and marked as **Annexure- "I"**.
14. That on 1.11.2020 the learned court below rejected the written objection of the defendant No. 2 to the expert opinion. The date was fixed on 14.01.2021 for examination of expert but the same could not happen due to sudden death of mother of the learned Advocate of the writ petitioner. Certified copy of the order dated 1.11.2020 is annexed hereto and marked as **Annexure- J"**.
15. That it is submitted that the duty of the Artha Rin Adalat is not only to recover money but also to recover the same from the right person in accordance with law. The court should determine the position of the defendant. It is the divine duty of court. It secures the purity of the duty of court in accordance with law. When the name of one or more defendants are added the borrowers-defendants by practicing fraud, malafide and illegality, it automatically casts a duty upon the Artha Rin Adalat to determine the real borrower and user of the loan. But in the instant case, the petitioner categorically stated that he did not borrow the loan and his signatures were forged which can be proved by examining the originals of all security documents, but the learned court is not considering the same; as such the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.
16. That it is submitted that by order No. 33 dated 10.04.2019 the Artha Rin Adalat allowed the application of the petitioner for sending all the documents as mentioned in paragraph 13 of page 13 of the plaint but subsequently without assigning any reason and giving any opportunity of being heard to the petitioner, the learned court below automatically shifted

from its earlier order and thereby passed the impugned orders only by sending the personal letters of guarantees for expert verification, which is absolutely illegal, malafide and arbitrary. As such, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.

17. That it is submitted that in case of fraud or forgery in loan documents, the adjudication court should arrive at the specific finding first regarding fraud and forgery; in the present case the petitioner raised the issue of specific fraud and forgery before the Artha Rin Adalat but the court did not take proper steps to arrive at the specific step in order to determine and adjudicate the same. Sending all the documents as mentioned in paragraph 13 and page 13 of the plaint as well as letter of acknowledgement dated 2.11.2011 as mentioned in paragraph 8 may opened and settled the issue relating to fraud and forgery. As such, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.
18. That it is submitted that it is earlier admitted that the defendant No. 3 applied for the loan in question, and considering his application, the loan was granted by the plaintiff bank. This writ petitioner as the defendant No. 2 had no knowledge about the process of loan. He was not involved with any process of loan. But forging his signature, he was tagged with this loan. As such, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.
19. That it is submitted that in paragraph No. 8 of the plaint it is stated that the defendant No. 2 on 2.11.2011 vides a letter acknowledged the loan liability, but the defendant No. 2-writ petitioner did not sign any of such document. As such, this document is also need to be examined by the expert to verify the veracity. Hence, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.
20. That it is submitted that it was also admitted by the LGED authority that the project was governing by the defendant No. 3, when he failed to accomplish, only then the petitioner completed the rest of the work/project incurring huge loss and cancelling everything with the defendant No. 3 at his own risk and peril. But the learned court did not examine this factual truth minutely. Hence, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.
21. That it is stated that petitioner has authorized the under signed deponent to act and perform on his behalf by executing a General Power of Attorney in relation to this above Writ Petition and thereby he is competent to swear this Affidavit. Copy of the Power of Attorney is annexed hereto and marked as **Annexure-“K”**.¹
22. That it is stated that the petitioner does not possess the original copies of the annexure as those are lying to the respondents and he has collected photocopies of the annexures and crave leave of the Hon’ble Court to swear affidavit with the photocopies of the annexures. The petitioner believes that the contents of the photocopies are true and genuine.

1. Please submit the original copy of the power of attorney or letter of authority, as applicable.

23. That in the premises aforesaid the petitioner being aggrieved by and dissatisfied with the impugned Order Nos. 39 and 40 dated 05.11.2019 and 30.01.2020, respectively passed by the learned Judge, Artha Rin Adalat No. 2, Dhaka in Artha Rin Suit No. 1155 of 2016 shifting from its earlier No. 33 dated 10.04.2019 unilaterally sending the Letter of Guarantee only for expert opinion in lieu of all security documents as mentioned paragraph 13 page 13 of the plaint, and finding no other alternative equally efficacious remedy, begs to file this writ petition before this Hon'ble Court on the following amongst other—

G R O U N D S

- I. For that the duty of the Artha Rin Adalat is not only to recover money but also to recover the same from the right person in accordance with law. The court should determine the position of the defendant. It is the divine duty of court. It secures the purity of the duty of court in accordance with law. When the name of one or more defendants are added the borrowers-defendants by practicing fraud, malafide and illegality, it automatically casts a duty upon the Artha Rin Adalat to determine the real borrower and user of the loan. But in the instant case, the petitioner categorically stated that he did not borrow the loan and his signatures were forged which can be proved by examining the originals of all security documents, but the learned court is not considering the same; as such the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.
- II. For that by order No. 33 dated 10.04.2019 the Artha Rin Adalat allowed the application of the petitioner for sending all the documents as mentioned in paragraph 13 of page 13 of the plaint but subsequently without assigning any reason and giving any opportunity of being heard to the petitioner, the learned court below automatically shifted from its earlier order and thereby passed the impugned orders only by sending the personal letters of guarantees for expert verification, which is absolutely illegal, malafide and arbitrary. As such, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.
- III. For that in case of fraud or forgery in loan documents, the adjudication court should arrive at the specific finding first regarding fraud and forgery; in the present case the petitioner raised the issue of specific fraud and forgery before the Artha Rin Adalat but the court did not take proper steps to arrive at the specific step in order to determine and adjudicate the same. Sending all the documents as mentioned in paragraph 13 and page 13 of the plaint as well as letter of acknowledgement dated 2.11.2011 as mentioned in paragraph 8 may opened and settled the issue relating to fraud and forgery. As such, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.
- IV. For that it is earlier admitted that the defendant No. 3 applied for the loan in question, and considering his application, the loan was granted by the plaintiff bank. This writ petitioner as the defendant No. 2 had no knowledge about the process of loan. He was not involved

with any process of loan. But forging his signature, he was tagged with this loan. As such, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.

- V. For that in paragraph No. 8 of the plaint it is stated that the defendant No. 2 on 2.11.2011 vides a letter acknowledged the loan liability, but the defendant No. 2-writ petitioner did not sign any of such document. As such, this document is also need to be examined by the expert to verify the veracity. Hence, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.
- VI. For that it was also admitted by the LGED authority that the project was governing by the defendant No. 3, when he failed to accomplish, only then the petitioner completed the rest of the work/project incurring huge loss and cancelling everything with the defendant No. 3 at his own risk and peril. But the learned court did not examine this factual truth minutely. Hence, the impugned orders shall liable to be declared to have been issued done without lawful authority and is of no legal effect.

WHEREFORE, it is humbly prayed that your Lordships would be graciously pleased:

- A. To issue Rule *Nisi* calling upon the respondents to show cause as to why the impugned Order Nos. 39 and 40 dated 05.11.2019 and 30.01.2020, respectively passed by the learned Judge, Artha Rin Adalat No. 2, Dhaka in Artha Rin Suit No. 1155 of 2016 shifting from its earlier No. 33 dated 10.04.2019 unilaterally sending the Letter of Guarantee only for expert opinion in lieu of all security documents as mentioned paragraph 13 of the plaint shall not be declared to have been passed without lawful authority and is of no legal effect;
- B. After hearing the parties and perusing the cause shown, if any, make the Rule absolute;
- C. Pending hearing of the Rule, be further pleased to send the security documents as mentioned in paragraph 13 of the plaint along with the letter of acknowledgement dated 2.11.2011 as mentioned in paragraph 8 of the plaint to the independent expert opinion for ends of justice;

- D. Pending hearing of the Rule, be further pleased to stay the operation of the further process of Artha Rin Suit No. 1155 of 2016, now pending before the learned Artha Rin Adalat No. 2, Dhaka for ends of justice;
- E. Pass such other or further order or orders as your Lordships may seem fit and proper.

And for this act kindness, the petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Amin Mohammad Mustafa, son of Md. Shafiqul Islam and Momena Islam, of House No. – 255, Road- Purbo Senpara Parbata, Post Office- Mirpur- 1216, Kafrul, Dhaka Uttar City Corporation, Dhaka, aged about- 42 years, by faith- Muslim, by profession- Service, by nationality- Bangladeshi, National ID No. 5002771132 do hereby solemnly affirm and say as follows:-

- 01. That I am the authorized person of the petitioner I am acquainted with the facts and circumstance of the case and as such I am competent to swear the Affidavit.
- 02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 202
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership # 6731
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. _____ OF 2020.

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

AND**IN THE MATTER OF:**

M/S. ZM Sanitary (Pvt.) Limited, represented by its Managing Director Jafar Sadek Junayed of 17, Paribagh, Sonargaon Road, Hatirpool.

----- **Petitioner.**

–Versus–

1. Bangladesh Bank, represented by the Governor, Bangladesh Bank Bhaban, Motijheel Commercial Area, Police Station Motijheel, Dhaka.
2. The Deputy Governor, Department of Banking Inspection-1, Bangladesh Bank, Bangladesh Bank Bhaban, Motijheel C/A, Dhaka.
3. KVC Islamic Bank Limited, represented by its Managing Director, Head Office of T.K. Bhaban (15th floor), 13 Kazi Nazrul Islam Avenue Kawran Bazar, Dhaka -1215.
4. SVP & Head of Recovery, KVC Islamic Bank Limited, Head office address- T.K. Bhaban, 13 Kazi Nazrul Islam Avenue, Kawran Bazar, Dhaka-1215.
5. The Manager & Head of Branch, KVC Islamic Bank Limited, Kawran Bazar Branch, T.K. Bhaban, 13 Kazi Nazrul Islam Avenue, Karwan Bazar, Dhaka-1215.

..... **Respondents.**

AND**IN THE MATTER OF:**

Inaction and failure of the respondent Nos. 1-2 to direct the respondent Nos. 3-5 to reschedule the loan of the petitioner in full compliance with the BRPD Circular No. 5 dated 16.05.2019 since they already took the required amount of down-payment for reschedulement as per the said circular.

AND**IN THE MATTER OF:**

Direction upon the respondent No. 1 to take appropriate steps against the respondent Nos. 3-5 and to direct them to reschedule the loan of the petitioner in full compliance with BRPD Circular No. 5 dated 16.05.2019.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the petitioner above-named most respectfully—

S H E W E T H:

1. That the petitioner is a prominent businessman who has been doing lawful business in our country.
2. That the respondent No. 1 is the Bangladesh Bank, represented by the Governor, Bangladesh Bank Bhaban, Motijheel Commercial Area, Police Station Motijheel, Dhaka, the respondent No. 2 is the Deputy Governor, Department of Banking Inspection-1, Bangladesh Bank, Bangladesh Bank Bhaban, Motijheel C/A, Dhaka, the respondent No. 3 is the KVC Islamic Bank Limited, represented by its Managing Director, Head Office of T.K. Bhaban (15th floor), 13 Kazi Nazrul Islam Avenue Kawran Bazar, Dhaka -1215, the respondent No. 4 is the SVP & Head of Recovery, KVC Islamic Bank Limited, Head office address- T.K. Bhaban, 13 Kazi Nazrul Islam Avenue, Kawran Bazar, Dhaka-1215 and the respondent No. 5 is the Manager & Head of Branch, KVC Islamic Bank Limited, Kawran Bazar Branch, T.K. Bhaban, 13 Kazi Nazrul Islam Avenue, Karwan Bazar, Dhaka-1215
3. The addresses of the respondents given in the cause title are corrected addresses for purpose of issuing summons/ notices upon them.
4. That the petitioner ZM Sanitary Pvt. Limited is a company duly incorporated under the laws of Bangladesh. On 18.03.2010, the respondent KVC Islamic Bank Limited (*shortly referred to as the 'said bank'*) sanctioned some credit facilities to the writ petitioner in the form of- Bai-Murabaha- for 5 years, Bai Muajjal- for 1 years, Letter of Credit-for 1 years, BM Post Import-for 1 years *vide* sanction letter being no. KVCIBL: IASD/81. Thereafter, the said facilities were renewed on 15.05.2011 *vide* sanction letter being no. KVCIBL: HO-IASD/BB/2011/340.

5. That since then, the petitioner has repaid almost Tk. 7,15, 09,411.36/- (Taka Seven Crore Fifteen Lac Nine Thousand Four Hundred Eleven and paisa Thirty Six) only. But, very unfortunately, due to suffering immense loss in business, the repayment mode was interrupted. The bank filed an Artha Rin Suit No. 1053 of 2014 in the Court of Artha Rin Adalat No. 4, Dhaka and obtained an ex-parte decree 06.04.2017. The petitioner had no idea about the suit. Later on, the bank filed Artha Rin Execution Suit No. 162/2017 which is now pending before the Artha Rin Adalat No. 4, Dhaka for carrying out further procedures under section 33 of the Artha Rin Adalat Ain. Photocopies of the Artha Rin Suit along with all documents and Artha Execution Case is annexed hereto and marked as **Annexure- “A”**.
6. That in the meantime, Bangladesh Bank gave an opportunity to the defaulter borrowers to get relief from the liability which has been classified as bad & loss *vide* BRPD Circular No. 05 dated 16.05.2019. In order to avail this opportunity, the petitioner made an application to the bank *vide* a letter dated 29.08.2019 expressing its intention to settle its outstanding dues. Photocopy of the circular and letter are annexed hereto and marked as **Annexure- “B and B-1”**.
7. That in response to the letter, the bank issued a letter dated 29.08.2019 directing the petitioner to deposit Tk. 32,33,301. 12/- (Thirty Two Lac Thirty Three Thousand Three Hundred One and paisa Twelve) only which was equal to 2% of the total rescheduled amount of Tk. 16,16,65,056.18/- (Sixteen Crore Sixteen Lac Sixty Five Thousand Fifty Six and paisa Eighteen) only. Photocopy of the letter of bank dated 29.08.2019 is annexed hereto and marked as **Annexure- “C”**.
8. That as per the requirement of Bank, though the petitioner had to go through immense sufferings and hardship in arranging the money, the petitioner repaid bank's instructed amount with the bonafide intention to settle our outstanding due. The petitioner deposited Tk. 22,00,000/- (Twenty Two Lac) only *vide* a pay order dated 16.02.2020, Tk. 10,00,000/- (Ten Lac) only *vide* a cheque being no. JSB No. A0620018 dated 20.10.2019 and Tk. 35,000/- (Thirty Five Thousand) only *vide* a pay order dated 17.02.2020. The petitioner left no stone unturned to arrange the money and finally became successful in arranging so by borrowing from other. Under the ongoing situation, the petitioner is simply fighting for the survival. Despite our poor and vulnerable situation, the petitioner repaid Tk.32,35,000/- (Thirty Two Lac Thirty Five Thousand) only to said bank which clearly transpires its good intention to settle the loan liabilities with the bank and continue the good business relation which once the petitioner and the bank shared in-between. Photocopies of the cheque is annexed hereto and marked as **Annexure- “D”**.
9. Thereafter, the petitioner on several occasions verbally requested the bank to waive off all the unapplied interest and interest accumulated in Interest Suspense A/C and reschedule the outstanding amount as per the terms and conditions of BRPD Circular No. 05 dated 16.05.2019 by allowing 1 year grace period. But, to the utter surprise of the petitioner, the bank issued a sanction advice no. KVCIBL: RCVRY: HO: 2020/203 dated 30.06.2020 where it neither waived off the unapplied interest and interest accumulated in 'Interest Suspense A/C' nor it allowed 1 year grace period. Rather the bank imposed arbitrary clause

like executing Solenama only after the payment of 03 EMI's. Not only that, at condition no. 4 of the said sanction advice dated 30.06.2020, it is mentioned that the repayment will start from July, 2020 which is impossible to be fulfilled as the whole world including Bangladesh is going through the pandemic of COVID-19 and economic rescission as a result of which small and medium businessman all are fighting for their survival. All these arbitrary, unfair, malafide and unreasonable conditions laid down in said sanction advice are the flagrant violations of the sanction advice No. KVCIBL: RCVRY: HO: 2020/203 dated 30.06.2020. Photocopy of the sanction advice dated 30.06.2020 is annexed hereto and marked as **Annexure- "E"**.

10. That it is pertinent to mention here that all are going through a hard time because of the ongoing worldwide economic rescission caused by the pandemic of COVID-19. All the business entities are in a dead-lock situation including the petitioner's business. Even before the ongoing situation, our company was not generating any revenue since a long period of time. The government has already declared many incentive schemes and the Bangladesh Bank has already issued several circulars i.e. suspending installments till September 2020, waiving off interest. But, without addressing the ongoing hardship and without complying the circulars of Bangladesh Bank, the aforesaid bank has imposed some unjust, unreasonable and harsh terms and conditions in the said sanction advice dated 30.06.2020.
11. That under the circumstances, on 15.07.2020, the petitioner humbly requested the concerned bank to issue a fresh sanction advice by waiving off all the unapplied interest, and the interest accumulated in 'Interest Suspense A/C' and reschedule the outstanding amount for 10 years with 1 year grace period as per the terms and conditions of BRPD Circular No. 05 dated 16.05.2019, but the same met with no response. Photocopy of the letter dated 15.07.2020 is annexed hereto and marked as **Annexure- "F"**.
12. That under the circumstances, the petitioner for taking appropriate steps against KVC Islamic Bank Limited submitted a representation to Bangladesh bank on 6.09.2020 and also for directing it to waive off all the unapplied interest and the interest accumulated in 'Interest Suspense A/C' and for rescheduling the outstanding amount for 10 years with 1 year grace period as per the terms and conditions of BRPD Circular No. 05 dated 16.05.2019 for upholding the rule of law. The letter has not met with any response yet. Photocopy of the received letter dated 6.09.2020 to the Bangladesh Bank is annexed hereto and marked as **Annexure- "G"**.
13. That the aforesaid circular giving reschedulement facility giving downpayment @ 2% has already been tested by the Hon'ble High Court Division. For prompt orientation, the judgment is annexed hereto and marked as **Annexure- "H"**.
14. That it is submitted that the circular of Bangladesh Bank is binding upon all the schedule banks. When the respondent Nos. 3-5 agreed to reschedule the loan, the same becomes binding upon them to comply with. But Bangladesh Bank has clearly failed to carry out its regulatory function in respect of supervising its scheduled respondent No. 3 bank. As such, the impugned inaction and failure of the respondent No. 1 to direct the respondent Nos. 3-5

to reschedule the loan of the petitioner in full compliance with the BRPD Circular No. 5 dated 16.05.2019 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.

15. That it is submitted that the petitioner has become poor due to repeated loss in its business. Still the petitioner is trying to survive. But the respondents without acting legally and cooperating the innocent persons are ultimately playing with them. This is a violation of the fundamental right to life, business and profession as guaranteed in our constitution. Hence, the impugned inaction and failure of the respondent No. 1 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.
16. That it is submitted that being the regulatory and supervisory of all the scheduled banks, it becomes the responsibility of the Bangladesh bank to regulate and supervise the schedule banks whether they are deviating or violating the circulars/directives of Bangladesh Bank, whether they are acting malafide or playing fraud with the general customers, or whether they are depriving the legitimate claimants to take the facilities given by the Bangladesh Bank time to time. In this case, the Bangladesh Bank has clearly failed to carry out its obligation. As such, the impugned inaction and failure of the respondent No. 1 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.
17. That it is submitted that it is the duty of Bangladesh Bank to direct the schedule bank to reschedule the loan after depositing downpayment @ 2% qualifying all other conditions. In the present case, the petitioner deposited money as per the unilateral offer made by the Bangladesh Bank by the said BRPD circular. In response to that the petitioner applied to the concerned bank who agreed thereto, and in clear language the concerned bank informed about reschedulement to the petitioner. But when they issued the sanction advice, it does not comply with the conditions of said circular of Bangladesh Bank which is ex-facie illegal, malafide, arbitrary and illegal. As such, the impugned inaction and failure of the respondent No. 1 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.
18. That it is submitted that the sanction advice issued by the respondent Nos. 3-5 is outrageous and a thug upon the Bangladesh Bank and its said circular which has already tested positively by the Hon'ble High Court Division. No person within the territory of Bangladesh neither can deviate or can disrespect it. As such, the impugned inaction and failure of the respondent No. 1 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.
19. That the petitioner craves leave of the Hon'ble Court to swear affidavit with photocopies of the annexures, original copies of which are remained with the office of the petitioner who shall be bound to produce original copies as per order of this Hon'ble Court.
20. That in view of the above premises, there having no other equally effective, adequate and alternative remedy, the petitioner begs to file this writ petition on the following amongst others—

G R O U N D S

- I. For that the circular of Bangladesh Bank is binding upon all the schedule banks. When the respondent Nos. 3-5 agreed to reschedule the loan, the same becomes binding upon them to comply with. But Bangladesh Bank has clearly failed to carry out its regulatory function in respect of supervising its scheduled respondent No. 3 bank. As such, the impugned inaction and failure of the respondent No. 1 to direct the respondent Nos. 3-5 to reschedule the loan of the petitioner in full compliance with the BRPD Circular No. 5 dated 16.05.2019 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.
- II. For that the petitioner has become poor due to repeated loss in its business. Still the petitioner is trying to survive. But the respondents without acting legally and cooperating the innocent persons are ultimately playing with them. This is a violation of the fundamental right to life, business and profession as guaranteed in our constitution. Hence, the impugned inaction and failure of the respondent No. 1 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.
- III. For that being the regulatory and supervisory of all the scheduled banks, it becomes the responsibility of the Bangladesh bank to regulate and supervise the schedule banks whether they are deviating or violating the circulars/directives of Bangladesh Bank, whether they are acting malafide or playing fraud with the general customers, or whether they are depriving the legitimate claimants to take the facilities given by the Bangladesh Bank time to time. In this case, the Bangladesh Bank has clearly failed to carry out its obligation. As such, the impugned inaction and failure of the respondent No. 1 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.
- IV. For that it is the duty of Bangladesh Bank to direct the schedule bank to reschedule the loan after depositing downpayment @ 2% qualifying all other conditions. In the present case, the petitioner deposited money as per the unilateral offer made by the Bangladesh Bank by the said BRPD circular. In response to that the petitioner applied to the concerned bank who agreed thereto, and in clear language the concerned bank informed about reschedulement to the petitioner. But when they issued the sanction advice, it does not comply with the conditions of said circular of Bangladesh Bank which is ex-facie illegal, malafide, arbitrary and illegal. As such, the impugned inaction and failure of the respondent No. 1 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.
- V. For that the sanction advice issued by the respondent Nos. 3-5 is outrageous and a thug upon the Bangladesh Bank and its said circular which has already tested positively by the Hon'ble High Court Division. No person within the territory of Bangladesh either can deviate or can disrespect it. As such, the impugned inaction and failure of the respondent No. 1 shall liable to be declared to have been carried out illegally, without lawful authority and is of no legal effect.

WHEREFORE, it is humbly prayed that your Lordships would be graciously pleased:

- A. To issue Rule *Nisi* calling upon the respondents to show cause as to why the impugned inaction and failure of the respondent Nos. 1-2 to direct the respondent Nos. 3-5 to reschedule the loan of the petitioner in full compliance with the BRPD Circular No. 5 dated 16.05.2019 since they already took the required amount of down-payment for reschedulement as per the said circular shall not be declared to have been doing without lawful authority and is of no legal effect, and why the respondent Nos. 1-2 shall not be directed to take appropriate steps against the respondent Nos. 3-5 and to direct them to reschedule the loan of the petitioner in full compliance with BRPD Circular No. 5 dated 16.05.2019 for ends of justice;
- B. After hearing the parties and perusing the cause shown, if any, make the Rule absolute.
- C. Pending hearing of the Rule, be pleased to stay the further process of Artha Rin Execution Case No. 162 of 2012, now pending before the Artha Rin Adalat No. 4, Dhaka for ends of justice;
- D. Pending hearing of the Rule, be further pleased to direct the respondent No. 1 to dispose of the letter dated 6.09.2020 (Annexure- “G”) for ends of justice;
- E. Pass such other or further order or orders as your Lordships may seem fit and proper.

And for this act kindness, the petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Jafar Sadek Junayed, Managing Director of M/S. ZM Sanitary (Pvt.) Limited, of 17, Paribagh, Sonargaon Road, Hatirpool and 61/A, Tejturi Bazar, Tejgaon, Dhaka and European Standard, 2nd Floor, 106/A, Corner Place Super Market, Dhaka-1205, aged about- 39 years, by faith Muslim, by profession-Business, by Nationality-Bangladeshi, National ID No. 9136912681 do hereby solemnly affirm and say as follows :—

01. That I am the petitioner in this writ petition and fully acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 20
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No. 2, Supreme
Court Bar Association Building
Mobile :

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. _____ OF 2021

IN THE MATTER OF :

An application under Article 102 of the Constitution of
the People's Republic of Bangladesh.

AND

IN THE MATTER OF :

Ain o Sheba Data (ASD), of 63/23, Block - R, Lalmatia,
Dhaka-1207, represented by its Executive Director.

..... **Petitioner**

-VERSUS-

1. The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka.
2. The Secretary, Ministry of Home Affairs, the Government of the People's Republic of Bangladesh, Bangladesh Secretariat, Ramna, Dhaka.
3. The Deputy Commissioner, Cox's Bazar, Office of the Deputy Commissioner, Cox's Bazar.
4. The Additional Deputy Commissioner, Cox's Bazar, Office of the Deputy Commissioner, Cox's Bazar.
5. The Superintendent of Police, Cox's Bazar.
6. The Executive Magistrate, Cox's Bazar Sadar, Cox's Bazar.
7. The Upazila Nirbahi Officer, Cox's Bazar Sadar, Cox's Bazar.
8. The Assistant Commissioner (Land), Cox's Bazar Sadar, Cox's Bazar.
9. Officer-in-Charge, Cox's Bazar Sadar Police Station, Cox's Bazar.
10. The Department of Environment, Cox's Bazar District Office, Sayman Road, Jhawtala, Cox's Bazar.
11. Assistant Director, Department of Environment, Cox's Bazar District Office, Sayman Road, Jhawtala, Cox's Bazar.
12. The Editor, the Daily Ittefaq, 40, Karwan Bazar, Dhaka – 1215.

..... **Respondents.**

AND**IN THE MATTER OF :**

Inaction and failure of the respondent Nos. 1-11 to prevent/restrain the miscreant land grabbers from grabbing 60 acres of agricultural land situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar and thereby allowing them to change the nature of the said agricultural land.

AND**IN THE MATTER OF :**

Inaction and failure of the respondent Nos. 1-11 to recover 60 acres of agricultural land situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar from the illegal land grabbers and failure to hand over the same to the rightful owners.

AND**IN THE MATTER OF :**

Direction upon the respondent Nos. 1-11 to recover 60 acres of agricultural land situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar from the illegal land grabbers and hand over the same to the rightful owners in its original nature and character.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. The petitioner Ain o Sheba Data (ASD) is a national legal aid and human rights organization, established in 1999. Initially focused on providing free legal services to the disenfranchised in Dhaka City, its aims and activities have developed over twenty years to encompass investigation, advocacy, media campaigning, documentation, training and action research in addition to its core activities of legal services (including legal aid, mediation and public interest litigation). ASD was registered as a society with the Registrar of Joint Stock Companies and Firms, under the Societies Registration Act 1860 on September 20, 1999. It also registered with the NGO Affairs Bureau, under the Foreign

Donations (Voluntary Contributions) Regulation Ordinance, 1978 on June 28, 1993. ASD has contributed a lot in the promotion and development of the human rights of the public at large in our country. Earlier on several occasions, ASD has filed public interest litigations and secured the rights of many under privileged, deprived and discriminated people.

2. That the respondent No. 1 is the Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka; the Respondent No. 2 is the Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Ramna, Dhaka; the Respondent No. 3 is the Deputy Commissioner, Cox's Bazar, Office of the Deputy Commissioner, Cox's Bazar; the Respondent No. 4 is the the Additional Deputy Commissioner, Cox's Bazar, Office of the Deputy Commissioner, Cox's Bazar; the Respondent No. 5 is the Superintendent of Police, Cox's Bazar; the Respondent No. 6 is the Executive Magistrate, Cox's Bazar Sadar, Cox's Bazar; the Respondent No. 7 is the Upazila Nirbahi Officer, Cox's Bazar Sadar, Cox's Bazar; the Respondent No. 8 is the Assistant Commissioner (Land), Cox's Bazar Sadar, Cox's Bazar; the Respondent No. 9 is the Officer-in-Charge, Cox's Bazar Sadar Police Station, Cox's Bazar; the Respondent No. 10 is the Department of Environment, Cox's Bazar District Office, Sayman Road, Jhawtala, Cox's Bazar; the Respondent No. 11 is the Assistant Director, Department of Environmen, Cox's Bazar District Office, Sayman Road, Jhawtala, Cox's Bazar; and the Respondent No. 12 is the Editor, the Daily Ittefaq, 40, Karwan Bazar, Dhaka – 1215.
3. That the address of the Petitioner as mentioned in the case title is the correct address for the purpose of service of notice(s) upon him.
4. That the petitioner on 14.03.2021 came across a news published in the Daily Ittefaq titled “কক্সবাজারে অবৈধভাবে ভরাট হচ্ছে ৬০ একর ফসলি জমি : জমির মালিকরা অসহায়, প্রশাসন নীরব”. It was reported in the news that some miscreants/land grabbers in the Cox's Bazar Sadar illegally garbed 60 acres of agricultural land situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar filled up the same with sands converting it into a housing area. They are converting the agricultural land into housing project in illegal manner and unlawful way. It is also alleged that the local authority is also colluding with such heinous activity snatching away the only means of living of the poor farmers. The news is reproduced here as ready reference—

“কক্সবাজার অবৈধভাবে ভরাট হচ্ছে ৬০ একর ফসলি জমি

জমির মালিকরা অসহায়, প্রশাসন নীরব

সায়ীদ আলমগীর, কক্সবাজার প্রতিনিধি

কক্সবাজার সদরের বাকখলী নদীর তীরবর্তী উত্তর মুহুরীপাড়ার তিন ফসলি প্রায় ৬০ একর উর্বর জমি ভরাট করে ফেলা হচ্ছে। দুই কিলোমিটার দূরত্বে গড়ে ওঠা রেলস্টেশনকে কেন্দ্র করে বাণিজ্যিক চিন্তায় ‘আবাসন প্রকল্প’ গড়তেই আইন উপেক্ষা করে রাত-দিনে এসব জমি ভরাট করছে ভূমিদস্যু চক্র।

শতাধিক কৃষক পরিবারের ‘অন্ধের যষ্টি’ তিন ফসলি জমি ভরাট থেকে রক্ষায় জেলা প্রশাসক, কৃষি বিভাগ, পরিবেশ অধিদপ্তর ও কক্সবাজার উন্নয়ন কর্তৃপক্ষের চেয়ারম্যান বরাবর আবেদন দিয়েও কোন সুরাহা পাচ্ছে না বলে অভিযোগ ক্ষতিগ্রস্তদের। অথচ ‘কৃষি জমি সুরক্ষা ও ভূমি ব্যবহার’ আইনে ফসলি জমি ভরাট করে কোনো স্থাপনা বা আবাসন প্রকল্প বা শিল্পকারখানা গড়ে তোলার কোনো সুযোগ নেই। কক্সবাজার কৃষি বিভাগ, উপজেলা প্রশাসন মাটি ভরাট রদে উপযুক্ত আইন পাচ্ছে না বলে দাবি করলেও বিষয়টি গুরুত্বসহকারে খতিয়ে দেখা হচ্ছে বলে জানিয়েছে কক্সবাজার উন্নয়ন কর্তৃপক্ষ।

কক্সবাজার সদর উপজেলা কৃষি অফিস সূত্রমতে, মধ্য ঝিলংজা ব্লকের বাঁকখালী নদীর তীরবর্তী প্রায় ৬০ একর জমি পলি দো-আঁশ বেষ্টিত অতি উর্বর ভূমি। এসব জমিতে আমন ও বোরোর মৌসুমে প্রায় ১০ হাজার মণ ধান উৎপাদন হতো এসব ধানের বিক্রি মূল্য দাঁড়াত প্রায় ১ কোটি টাকা। পাশাপাশি আমন মৌসুমে ধানের পাশাপাশি শাকসবজি চাষ হতো।

ক্ষতিগ্রস্তদের মধ্যে আবদুর রহমান, সাজেদা বেগম, মনিরুল আলম, জাহেদা বেগম, জাফর আলম, কামরুল ইসলামসহ ৩৩ জন লিখিত অভিযোগে উল্লেখ করেন, এ এম জি ফেরদৌস তাদের জমি জোরপূর্বক ভরাট করছেন। 'আবাসন প্রকল্প' গড়তে বাঁকখালী নদীর তীর ঘেঁষে থাকা জমির পর এখন বসতবাড়ির লাগোয়া জমিও ভরাট করা হচ্ছে। কিছু বললে জমি বিক্রি করে দিতে বলছে। ফসলি জমি বিক্রি করব না বলার পরও ভূমিদস্যুরা গায়ের জোরে মাটি ভরাট অব্যাহত রাখতে চট্টগ্রামের ফটিকছড়িসহ জিলার বিভিন্ন এলাকার চিহ্নিত ও জিলফিরত সন্ত্রাসীদের 'চুক্তিভিত্তিক' এনে পাহারা বসিয়েছে। কেউ নিষেধ করতে এলে তাদের সামনে সন্ত্রাসীরা সশস্ত্র মহড়া দেয়। এতে প্রাণনাশের ভয়ে নিরাশ মনে ফিরে যান জমির মালিকরা।

অভিযোগ এর বিষয়ে জানতে অভিযুক্ত এ এম জি ফেরদৌসের মোবাইল ফোন একাধিকবার ফোন করা হয়। রিং হলেও ফোন রিসিভ না করায় পাঠানো হয় এসএমএস। তার উত্তরও দেননি, কলও করেনি ফেরদৌস।

সরেজমিনে দেখা যায়, বাঁকখালী খাল থেকে অবৈধভাবে বালি উত্তোলন করে কৃষি জমিতে রাখা হয়েছে। একাধিক এক্সকাভেটর দিয়ে এসব বালু শাঠাধিক কানি ফসলি জমিতে ছড়িয়ে ভরাট করা হচ্ছে। এক্সকাভেটর চালক ও শ্রমিকরা জানান, জনৈক ফেরদৌস তাদের ঘন্টা হিসাবে মুজুরিতে বালি ভরাটের কাজ করচ্ছেন। এর বইহরে তারা আর কিছু বলতে চাননি। মাটি ভরাট স্থলে লোকজন দেখে কয়েক জন যুবক হঠাৎ সেখানে আসেন। সংবাদকর্মী পরিচয় দিয়ে তাদের পরিচয় জানতে চাইলে নিজেরা ফটিকছড়ির বাসিন্দা উল্লেখ করে সটকে পড়েন। বাড়ির লাগোয়া জমিগুলোতে এখনো শীতকালীন সবজির বাম্পার ফলনের চিহ্ন বিদ্যমান।

কক্সবাজার কৃষি সম্প্রসারণ অধিদপ্তরের উপ-পরিচালক (ভারপ্রাপ্ত) মো. আতিক উল্লাহ বলেন, 'ভরাটের জমি অতি উর্বর। এভাবে কৃষি জমি ধ্বংস হলে জেলায় খাদ্য সংকট দেখা দেওয়ার শঙ্কা রয়েছে। আমরা পরামর্শ দিতে পারলেও কাউকে বাধা দিতে পারি না।'

কক্সবাজার সদর উপজেলার নির্বাহী অফিসার (ইউএনও) সুরাইয়া আকতার সুইটি বলেন, কেউ জমি ভরাট করলে তা রদ করার এখতিয়ার আমাদের নেই। তবে, 'কৃষি জমি সুরক্ষা ও ভূমি ব্যবহার' খসড়া আইন বিষয়ে দৃষ্টি আকর্ষণ করা হলে ইউএনও বলেন, অভিযোগ পেলে কি করা যায় তা আমরা খতিয়ে দেখব।

কক্সবাজার উন্নয়ন কর্তৃপক্ষের (কউক) চেয়ারম্যান লে. কর্নেল (অব.) ফোরকান আহমেদ বলেন, স্থানীয় কিছু লোকের লিখিত অভিযোগ পেয়ে আমাদের নির্বাহী ম্যাজিস্ট্রেটকে ঘটনাস্থলে পাঠিয়ে কাজ বন্ধ রাখা হয়েছে। কৃষি জমি ভরাট করে কোনো আবাসন প্রকল্প অনুমোদন দেওয়া হবে না।'

Copy of the news report published in the Daily Ittefaq on 14.03.2021 is annexed herewith and marked as **Annexure-A**.

- That the petitioner came across another news dated 15.03.2021 titled "খবর-চাপা-দিতে-ইত্তেফাকের-সব-কপি-কিনে-নিল-অভিযুক্তরা?" published in Daily Ittefaq in which it is reported that the said miscreants involved in land grabbing bought out all the copies of Daily Ittefaq of 14.03.2021 with a view to suppress the news published therein regarding the illegal grabbing of 60 acres of Agricultural Land situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar. For ready reference, the news is reproduced below:

“দৈনিক ইত্তেফাক সোমবার, ১ চৈত্র ১৪২৭ ১৫ মার্চ ২০২১

খবর চাপাদিতে ইত্তেফাকের সব কপি কিনে নিল অভিযুক্তরা!

কক্সবাজারের মুহুরীপাড়ায় বেআইনিভাবে জমি ভরাট

সায়ীদ আলমগীর, কক্সবাজার

কক্সবাজার সদরের বাঁকখালী নদীর তীরবর্তী উত্তর মুহুরীপাড়ার তিন ফসলি প্রায় ৬০ একর উর্বর জমি ভরাট করার বিষয় নিয়ে সচিব প্রতিবেদন প্রকাশের খবর ধামাচাপা দিতে সব পত্রিকার কপি অতিরিক্ত দামে কিনে নিয়ে গেছে মাটি ভরাটে অভিযুক্ত চক্রের লোকজন। সকালে পত্রিকার এজেন্ট ও হকারদের ধরে প্রতিটি পত্রিকা পাঁচ গুণ দাম দিয়ে কিনে নিয়ে গেছে বলে জানিয়েছে পত্রিকার এজেন্ট মেসার্স খবর বিতানের মালিক মোহাম্মদ হাসিম। মাটি ভরাটের ফলে ক্ষতিগ্রস্ত কৃষকরা দোকানে এসে পত্রিকা না পেয়ে সৌজন্য কপির ফটোকপি করে নিয়ে গেছেন বলেও উল্লেখ করেন তিনি। এদিকে, দৈনিক ইত্তেফাকের

সচিত্র প্রতিবেদন দেখে জেলা প্রশাসক মো. মামুনুর রশীদের নির্দেশে ঘটনাস্থল পরিদর্শন করেছেন কক্সবাজার সদর উপজেলা সহকারি কমিশনার (ভূমি) ও নির্বাহী ম্যাজিস্ট্রেট নু এমং মারমা। তিনি জানান, রবিবার দুপুরে দিকে ভূমি অফিসের একটি টিম নিয়ে সংশ্লিষ্ট জমির স্থলে গিয়েছিলাম। ভরাট স্থলে আমাদের খাস জমিগুলোর সীমানা চিহ্নিত করেছি। বাকি জমির মালিকানা জারা দাবি করেছেন তাদের সংশ্লিষ্ট কাগজপত্র সহ অফিসে যোগাযোগ করার জন্য বলে এসেছি।

অভিযোগ সূত্রে জানা যায়, দুই কিলোমিটার দূরত্বে গড়ে ওঠা রেলস্টেশনকে কেন্দ্র করে বাঁকখালী নদীর তীরবর্তী উত্তর মহুরীপাড়ার তিন ফসলি জমিতে বাণিজ্যিক চিন্তায় 'আবাসন প্রকল্প' গড়েই আইন উপেক্ষা করে রাত-দিন জমি ভরাট করছে একটি চক্র। শতাধিক কৃষক পরিবারের একমাত্র অবলম্বন তিন ফসলি জমি ভরাট থেকে রক্ষায় জেলা প্রশাসক, কৃষি বিভাগ, পরিবেশ অধিদপ্তর ও কক্সবাজার উন্নয়ন কর্তৃপক্ষের চেয়ারম্যান বরাবর আবেদন দিয়েও কোন সুরাহা পাচ্ছিলেন না বলে অভিযোগ করেন ক্ষতিগ্রস্তরা। কিন্তু 'কৃষি জমি সুরক্ষা ও ব্যবহার' আইনে ফসলি জমি ভরাট করে কোন স্থাপনা বা আবাসন প্রকল্প বা শিল্প কারখানা গড়ে তোলার কোন সুযোগ নেই। ক্ষতিগ্রস্তদের মধ্যে ৩৩ জন লিখিত অভিযোগে উল্লেখ করেন, একটি ক্ষমতাদার চক্র তাদের জমি জোরপূর্বক ভরাট করছেন। কিছু বললে জমি বিক্রি করে দিতে বলছে। ফসলি জমি বিক্রি করব না বলার পরও গায়ের জোরে মাটি ভরাট অব্যাহত রাখতে চট্টগ্রামের ফটিকছড়ি সহ জিলার বিভিন্ন এলাকার চিহ্নিত ও জিলফিরত সন্ত্রাসীদের 'চুক্তিভিত্তিক' এনে পাহারা বসিয়েছে। কেউ নিষেধ করতে এলে তাদের সামনে সন্ত্রাসীরা সশস্ত্র মহড়া দেয়।

কক্সবাজার উন্নয়ন কর্তৃপক্ষের (কউক) চেয়ারম্যান লে. কর্নেল (অব.) ফোরকান আহমেদ বলেন, কৃষি জমির শ্রেণি পরিবর্তন না করতে প্রধানমন্ত্রীর ঘোষণা বাস্তবায়নে কঠোরভাবে কাজ করবে কউক। যতবড় প্রভাবশালীই হোক, কৃষি জমি ভরাট করে কোনো আবাসন প্রকল্প অনুমোদন দেওয়া হবে না। “

Copy of the news report of 'Daily Ittefaq' dated 15.03.2021 is annexed herewith and marked as **Annexure-B.**

6. That being seriously concerned with such illegal act of land grabbing by the local miscreants and the direct and indirect collusion of the Respondent Nos. 1-11 and also being aggrieved for the sufferers and poor farmers, the petitioner, on 18.03.2021 sent a letter to the respondents requesting them to take appropriate action immediately so as to protect the rights of the poor farmers. Copy of the said Notice along with the Registered AD dated 18.03.2021 are annexed herewith and marked as **Annexure C and C-1.**
7. That the Petitioner came to know that the Respondents took no action on the notice dated 18.03.2021 and hence sent a Legal Notice dated 24.03.2021 requesting them to recover the said Agricultural Land and hand over the same to their legal owners. Copy of the said Legal Notice along with the registered AD are annexed herewith and marked as **Annexure D and D-1.**
8. That it is stated that after seeing the news, the Petitioner communicated with the reporter of said news and also with the local people who also confirmed about the said news. They have also alleged that the local administration is totally silent about taking any action against the real culprits who are very illegally and arbitrarily grabbing the land of helpless peasants with the help of local administration, politically powerful persons and other influential vested quarters.
9. That it is stated that neither the said land has been acquired by the Government nor has the same been purchased from the peasants who are the real owners. This land is their only support for livelihood. They are very poor and helpless. They are there from the period of their ancestors. By the recorded nature, the land is recorded as agricultural land but the perpetrators are now changing the class without taking any permission from the concerned authority by evicting the peasants very illegally and arbitrarily.

10. That it is stated that the Petitioner came to know that the aggrieved persons and the helpless peasants had gone to the concerned offices for several times for making complain, but none of the authority recorded their case. Rather they were terribly threatened to physical torture and life by the miscreants and local administration. Their all sorrows and tears have met with no positive step by any of the local authority concern who is under Constitutional obligation to protect them though. This is very regretful. By doing so, they have not only failed to protect the sufferers against powerful miscreants and land grabbers but also miserably failed to discharge their responsibilities as public servant which is a gross violation of the human rights of the affected poor land owners. The local police instead of recoding any case or GD, merely received a complain, but under what law they prevented the suffers from lodging the case which is best known to the authorities only. Copies of the Complaint made to different authorities are annexed herewith and marked as **Annexure E, E-1, E-2 and E-3.**
11. That it is submitted that the respondent Nos. 1-11 have seriously failed to dispose of their duties as the public authorities to protect the rights and interest of the poor peasants by allowing the miscreant land grabbers to grab 60 acres of agricultural land from its rightful owners thereby allowing them to convert the nature of the land, and therefore, the Hon'ble Court may kindly direct the respondent nos. 1-11 to recover the said land from the land grabbers and hand over the same to their rightful owners.
12. That it is submitted that it is the statutory obligation of the respondents to give social security to the people at large, especially being the public servant they are under Constitutional obligation to protect the poor people from the powerful vested quarters and land grabbers, thus to secure the right to life, property and livelihood of the disadvantaged and helpless people. But in the present case, the illegal act of land grabbing and converting the agricultural land into housing project has been carrying out in the eyes of the respondents openly by using power and force, but the respondents are remaining silent, in other way supporting the land grabbers which is not only disgraceful but also painful to endure. This is totally against our Constitutional spirit. This is a violation of fundamental rights. As such, the impugned inaction of the respondents shall liable to be declared to have been doing without lawful authority and is of no legal effect. Hence, they may kindly be directed to take necessary steps in order to prevent the land grabbers and also to handover the land to the rightful owners in its original manner in accordance with law.
13. That it is submitted that agricultural land is more required than housing project. Days after days our agricultural land is reducing due to illegal act of land grabbing. Many of the true events do not even see the light. It goes with the tears and helplessness of poor people. It is making more landless and homeless people. It is creating bad impact on our national economy too. People can't eat building or structure. We need more agricultural land to save our generation and making a better future. When peasants can cultivate in their land, they feel more independence and liberty rather than becoming the day labour or slave of others. This Government is also particularly sensitive for protecting the agricultural land more. But the land grabbers are up-to grabbing the land in every possible way depriving the poor peasants and also by taking away their last shield of survival. And the local administration is totally silent. This is not only violative of human rights but also a threat to the entire nation. It bears the marks of corruption, unfair gain, illegal practice, social imbalance,

economic discrimination, dominance of powerful people, helplessness of poor people, lawlessness and fragile rule of law. As such, the impugned inaction of the respondents shall liable to be declared to have been doing without lawful authority and is of no legal effect. Hence, they may kindly be directed to take necessary steps in order to prevent the land grabbers and also to handover the land to the rightful owners in its original manner in accordance with law.

14. That it is submitted that the poor farmers have been deprived of their constitutional right to be treated equally and be treated in accordance with law by the Respondent Nos. 1-11 as the Respondents have utterly failed to prevent the land grabbers from dispossessing the poor farmers/land owners illegally from their farm land and also by directly and indirectly assisting in the said illegal land grabbing, and therefore, the Hon'ble Court may kindly direct the Respondent Nos. 1-11 to bring the land grabbers to justice and recover and return the said land to the rightful owners.
15. That it is submitted that the said 60 acres of agricultural land is the only means of living of the poor farmers owning the land, and stripping them off from their means of living illegally by the vested quarters have brought them to the street, and therefore, the Respondent Nos. 1-11 may kindly be directed to take appropriate steps in recovering the said agricultural land from the illegal land grabbers and returning the same to the poor farmers.
16. That it is submitted that neither the land has been acquired by the Government, nor the Government has taken any step to convert the nature of the land, rather the vested quarters of the said locality grabbing the agricultural land illegally has filled up the said agricultural land with sands and stones making it a housing state, and therefore, the Respondent Nos. 1-11 may kindly be directed to take appropriate action against such illegal activities and restore the land to its previous status and to its owners.
17. That in the above facts and circumstances and finding no other equally efficacious remedy, the Petitioner begs to move before your Lordships under Article 102 of the Constitution on the following amongst others:-

GROUND S

- I. For that the respondent Nos. 1-11 have seriously failed to dispose of their duties as the public authorities to protect the rights and interest of the poor peasants by allowing the miscreant land grabbers to grab 60 acres of agricultural land from its rightful owners thereby allowing them to convert the nature of the land, and therefore, the Hon'ble Court may kindly direct the respondent nos. 1-11 to recover the said land from the land grabbers and hand over the same to their rightful owners.
- II. For that it is the statutory obligation of the respondents to give social security to the people at large, especially being the public servant they are under Constitutional obligation to protect the poor people from the powerful vested quarters and land grabbers, thus to secure the right to life, property and livelihood of the disadvantaged and helpless people. But in the present case, the illegal act of land grabbing and converting the agricultural land into housing project has been carrying out in the eyes of the respondents openly by using power and force, but the respondents are remaining silent, in other way supporting the land

grabbers which is not only disgraceful but also painful to endure. This is totally against our Constitutional spirit. This is a violation of fundamental rights. As such, the impugned inaction of the respondents shall liable to be declared to have been doing without lawful authority and is of no legal effect. Hence, they may kindly be directed to take necessary steps in order to prevent the land grabbers and also to handover the land to the rightful owners in its original manner in accordance with law.

- III. For that agricultural land is more required than housing project. Days after days our agricultural land is reducing due to illegal act of land grabbing. Many of the true events do not even see the light. It goes with the tears and helplessness of poor people. It is making more landless and homeless people. It is creating bad impact on our national economy too. People can't eat building or structure. We need more agricultural land to save our generation and making a better future. When peasants can cultivate in their land, they feel more independence and liberty rather than becoming the day labour or slave of others. This Government is also particularly sensitive for protecting the agricultural land more. But the land grabbers are up-to grabbing the land in every possible way depriving the poor peasants and also by taking away their last shield of survival. And the local administration is totally silent. This is not only violative of human rights but also a threat to the entire nation. It bears the marks of corruption, unfair gain, illegal practice, social imbalance, economic discrimination, dominance of powerful people, helplessness of poor people, lawlessness and fragile rule of law. As such, the impugned inaction of the respondents shall liable to be declared to have been doing without lawful authority and is of no legal effect. Hence, they may kindly be directed to take necessary steps in order to prevent the land grabbers and also to handover the land to the rightful owners in its original manner in accordance with law.
- IV. For that the poor farmers have been deprived of their constitutional right to be treated equally and be treated in accordance with law by the Respondent Nos. 1-11 as the Respondents have utterly failed to prevent the land grabbers from dispossessing the poor farmers/land owners illegally from their farm land and also by directly and indirectly assisting in the said illegal land grabbing, and therefore, the Hon'ble Court may kindly direct the Respondent Nos. 1-11 to bring the land grabbers to justice and recover and return the said land to the rightful owners.
- V. For that the said 60 acres of agricultural land is the only means of living of the poor farmers owning the land, and stripping them off from their means of living illegally by the vested quarters have brought them to the street, and therefore, the Respondent Nos. 1-11 may kindly be directed to take appropriate steps in recovering the said agricultural land from the illegal land grabbers and returning the same to the poor farmers.
- VI. For that neither the land has been acquired by the Government, nor the Government has taken any step to convert the nature of the land, rather the vested quarters of the said locality grabbing the agricultural land illegally has filled up the said agricultural land with sands and stones making it a housing state, and therefore, the Respondent Nos. 1-11 may kindly be directed to take appropriate action against such illegal activities and restore the land to its previous status and to its owners.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased—

- (A) To issue a Rule Nisi calling upon the respondent Nos. 1-11 to show cause as to why the impugned Inaction and failure of the respondent Nos. 1-11 to prevent/restrain the miscreant land grabbers from grabbing 60 acres of agricultural land situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar and thereby allowing them to change the nature of the said agricultural land, and why the impugned inaction and failure of the respondent Nos. 1-11 to recover 60 acres of agricultural land situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar from the illegal land grabbers and failure to hand over the same to the rightful owners shall not be declared to have been doing without lawful authority and is of no legal effect; and why the respondent nos. 1-11 shall not be directed to recover 60 acres of agricultural land situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar from the illegal land grabbers and hand over the same to the rightful owners in its original nature and character for ends of justice;
- (B) After hearing the parties and perusing the cause shown if any make the Rule absolute;
- (C) Pending hearing of the Rule, be further pleased to direct the respondent Nos. 1-11 to recover 60 acres of agricultural Land situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar from the illegal land grabbers and hand over the same to the rightful owners in its original nature and character for ends of justice;
- (D) Pending hearing of the Rule, be further pleased to direct the respondent Nos. 1-11 to prevent the miscreant land grabbers from entering into the 60 acres of agricultural Land in question situated at Muhuripara, adjacent to Backhali River, Cox's Bazar Sadar, Cox's Bazar in any manner;
- (E) Pending hearing of the Rule, be further pleased to pass necessary directions for forming a Judicial Enquiry Committee into this matter for submitting a

fair report before this Hon'ble Court for further order(s)/direction(s) as seem necessary by this Hon'ble Court;

- (F) Pass such other or further Order or Orders as the Petitioner is entitled to law and equity.

And for this act of kindness your humble Petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Muhaddesul; Amin Novel, Son of late Ashfaqur Rahman and late Khaleda Islam Khan, National ID No. 2695681184185, Of J J Tower, Apt B3, 8/D Lakecircus, Kalabagan, Police station- Kalabagan, District- Dhaka, Postcode-1205 aged about 50 years, by faith-Muslim, by occupation-lawyer, by nationality Bangladeshi, do hereby solemnly affirm and say as follows:—

01. That I am the petitioner in this writ petition and am fully conversant with the facts and circumstances of the case and as such competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 20
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile :

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 3217 OF 2019

IN THE MATTER OF

Golam Mohiuddin Hassan and others.

..... **Petitioners.**

–VERSUS–

Bangladesh, represented by the Secretary, Ministry of
Local Government, Rural Development and Co-
operatives, Bangladesh Secretariat, Secretariat Building,
Ramna, Dhaka and others

..... **Respondents.**

AFFIDAVIT-IN-OPPOSITION ON BEHALF OF THE RESPONDENT NO. 6

I, Abu Moksud, Father's name: Late Shafiqur Rahman, Mother's name: Late Firoza Begam, date of birth: 01.01.1962 address Holding: Ayesha Villa Road: Uttar Rumaliar Chora Poshtim, post office: Cox Bazar - 4700, Cox Bazar Pouroshabha, Cox Bazar Sadar, Coz Bazar, age about- 57 years old years, by faith - Muslim, by profession- Service, by nationality- Bangladeshi, National ID No. 2222405389737 do hereby solemnly affirm and say as follows—

01. That I am the Officer-In-Charge of the respondent No. 6 and dealing with the official records and file of this case and as such am acquainted with the facts and circumstances of the case and competent to swear this affidavit.
02. That a copy of the Rule Nisi along with the writ petition has been served upon me which I have come through and understood the contents thereof and I have been advised to controvert only those allegations which are material for the disposal of this Rule and the statements which I do not specifically admit hereinafter shall be deemed to have been denied by me.
03. That this deponent is the officer-in-charge of the respondent No. 6 and he is duly appointed by the Joint-Registrar, Divisional Co-operative Department, Chattogram vides letters dated 6.04.2017 and 12.04.2017 and minutes dated 10.09.2019. Photocopies of the letters dated 6.04.2017, 12.04.2017 and board resolution dated 10.09.2019 are annexed hereto and marked as **Annexure- “1, 2 and 3”**.
04. That the statements made in paragraph Nos. 1-2 for describing about the petitioners and respondents are matters of record, and the petitioners are under strict liability to prove the same.

05. That the statements made in paragraph No. 3 stating about the impugned order alleging that the same was non-speaking is absolutely illegal, arbitrary, malafide and misconceived; hence strongly denied by this deponent, because before issuance such order in question, several notices were served, meetings were held, paper publications were made for couple of months and years. The petitioners attended those meetings too and they are very aware of this issue of deterioration and broken condition of the building. This matter is going on between the parties for more than 10 (ten) years. Therefore, there arises no question of non-speaking order. It is absolutely a false contention from the part of the petitioners and hence denied by this deponent.
06. That the statements made in paragraph No. 4 about ownership of the Cox's Bazar Co-operative Super Market by the Cox's Bazar Central Co-operative Bank Limited and original plan of contracting 4 (four) stories building which is now just on the ground floor are the admission of the petitioners about the ownership of the respondent No. 6 over the said market and also about the original plan of 4 (four) storied building there; hence call for no comments.
07. That the statements made in paragraph No. 5 regarding the title of possession through contract Deed of the petitioners with the respondent No. 6 are absolutely illegal, misconceived, baseless and frivolous; thus denied by this deponent, because the petitioners are merely the tenants on monthly rental basis. The Deeds are so past in nature and at the immeasurable lesser cost @ Tk. 500 with condition to increase Tk. 20 per year. This is totally out of the time and context considering the present perspective. It is clearly stated in the Deeds that the petitioners are evictable and they are the monthly tenants. In fact, some of the petitioners are not using the shop for and by themselves; they have given sub-let and recovering high rent from the sub-tenants. Only for taking this benefit abusing the earlier deeds and the process of the court, the petitioners are taking disadvantage. As such, the Rule is liable to be discharged for ends of justice.
08. That the statements made in paragraph No. 6 stating about a testimonial dated 10.04.2010 given by one Assistant Engineer of Cox's Bazar Puurashava is absolutely misconceived, biased, old-one and not relevant anymore; hence denied by this deponent. Hence, the Rule is liable to be discharged for ends of justice.
09. That the statements made in paragraph No. 7 alleging that every time when the management of the respondent No. 6 get changed, they disturb the petitioners are absolutely false, wrongly presented and baseless; hence denied by this deponent. The fact is that the management of the respondent No. 6 has been trying hard for about last 10 (ten) years with petitioners who never co-operated with the management for constructing a modern building which will be according to the time, necessity, market standard and quality. As such, the Rule is liable to be discharged for ends of justice.
10. That the statements made in paragraph No. 8 stating about the fracture in the market building and the ignorance of the market authority to repair the same are false and misconceived; hence denied by this deponent. However, it is kind of admission from the part of the petitioner about the broken condition of the building, and the market authority is trying for a long period of time to convince the petitioners for construction of the new

building in the proposed manner. The market authority has no intention to deprive the petitioners in any way and they will be treated in accordance with law.

11. That the statements made in paragraph Nos. 9 - 10 alleging that the market authority wants to destroy the market in the name of development are absolutely false, frivolous and fictitious; hence denied by this deponent, because the respondent authority wants to make a full fledged commercial market building in the premise in question accommodating all modern facilities and accessories to meet the demand of local people, visitors, tourist and also in consistent with the surrounding environment and buildings, As such, the Rule is liable to be discharged for ends of justice.
12. That under the aforesaid circumstances the submissions and grounds made in the writ petition has no substance and the same are not tenable in the eye of law. As such, the Rule is liable to be discharged for ends of justice.
13. That it is stated that the market in question was established in the year 1984 and the same was declared risky by several authorities concerned including the Executive Engineer, Cox's Bazar Public Works Department vide by letter dated 8.02.2011, 10.03.2017 and many others. The market authority took resolutions for several times about construction of a new market and the petitioners are aware of this fact. Photocopies of letter dated 8.02.2011, 10.03.2017 and resolutions are annexed hereto and marked as **Annexures - "3, 4 and 5"**.
14. That upon the concurrent decision from all the authorities concerned, the market authority decided to construct a new market building in the relevant premise. In this connection recommendation by the Joint Registrar, Divisional Co-operative Society Department, Chottogram was made on 14.03.2018, 07.05.2018, 16.08.2018, approval was given on 16.08.2018, by 20.09.2018 and also by the other superior officer vide letter dated 01.10.2018 and 04.11.2018. Photocopies of letter dated 14.03.2018, 07.05.2018, 16.08.2018, 16.08.2018, 20.09.2018 01.10.2018 and 04.11.2018 are annexed hereto and marked as **Annexures - "6, 7, 8, 9, 10, 11 and 12"**.
15. That on the basis of the allegation made by the petitioners, the said Joint Registrar by serving proper notices to all concerned organized a hearing, and upon hearing the same the Joint Registrar held negative. Photocopy of the notice dated 10.03.2019, 31.03.2019 and resolution dated 30.05.2019 are annexed hereto and marked as **Annexures - "13, 14 and 15"**.
16. That the market authority informed all the superior authorities concerned including the petitioners by letter dated 16.05.2019 and they were also called in a general meeting, but the petitioners attend the same. It is assured by the market authority that no one will be deprived from getting allotment of the new market building and during the period of construction, an alternative arrangement for the petitioners can be made if they are ready to co-operate but the petitioners did not co-operate with the market authority at any stage. For ensuring safe, secured and healthy environment for the shop owners, customers, workers and all surrounding concerns it becomes undeniable necessity to construct new buildings in the market with all modern facilities in according with the time and demand. Photocopies of the letter dated 16.05.2019, 15.09.2019, 15.09.2019 and 24.12.2019 are annexed hereto and marked as **Annexures - "16, 17, 18 and 19"**.

17. That it pertinent to mention that the reports about broken and deteriorate condition of the market have been published so widely that the market has already reported as dangerous, risky and abandoned. If any person including the petitioner would face any adverse consequence (should not be) due to the vulnerable and broken condition of the market, and if the market building and roof would meet sudden fall due to natural disaster or force majeure situation, then the respondents should not be held responsible. Photocopies of few reports are annexed hereto and marked as **Annexures – “20”**.
18. That under the circumstances the Rule is liable to be discharged and the Order of status quo is liable to be vacated for ends of justice.
19. That this deponent craves leave of the Hon’ble Court to swear affidavit with photocopies of the Annexures, originals of which are remained with the office of the respondent No. 6 who shall be bound to produce original copies as per the demand of this Hon’ble Court. The deponent undertakes that the photocopies annexure are the true reflections of the original copies.
20. That in light of the above, the writ petition is liable to be dismissed and the Rule is liable to be discharged for ends of justice.
21. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon’ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate

Membership #

Hall Room No. 2, Supreme

Court Bar Association Building

Mobile :

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 15370 OF 2016

IN THE MATTER OF:

An application for issuing of supplementary Rule in this case.

AND

IN THE MATTER OF:

Alhaj Md. Mustafizur Rahman and another.

..... **Petitioner.**

–VERSUS–

The Government of People's Republic of Bangladesh, represented by its Secretary, Ministry of Social Welfare, Bangladesh Secretariat, Ramna, Dhaka and others.

..... **Respondents.**

AND

IN THE MATTER OF :

Alhaj Md. Mustafizur Rahman, son of late Md, Gunnu Miah, of 198/B, Biponi Bitan, Police Station: Kotwali, District: Chittagong, at present No.3 Harish Dutta Lane, Nandonkanon, Post Office: Sadar- 4000, Police Station: Kotwali, District: Chittagong

.....**Petitioner No. 1-Applicant.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the applicant above-named most respectfully—

S H E W E T H :

1. That the applicant has filed the above Writ Petition challenging the inaction of the respondent, in particular respondent No. 5 in taking necessary steps to cancel their approval to the amendment of constitution of Bipani Bidhan Marchants Welfare Agency, Chittagong removing sub-section (vo) of section 16 of the constitution.

2. That after hearing the learned Advocate of the petitioner, a Division Bench of the Hon'ble High Division was pleased to issue Rule Nisi vide order dated 06.12.2016 in the following manner—

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inaction of the respondents, in particular respondent No. 5 in taking necessary steps to cancel their approval to the amendment of constitution of Bipani Bitan Merchants Welfare Agency, Chittagong removing sub-section (ভ) of section 16 of the constitution should not be declared illegal to have been passed without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The respondents are directed to dispose of the application filed by the petitioner dated 30.11.2014 (Annexure - F) within 1(one) month from the date of receipt of a copy of this order in accordance with law.

The petitioners are directed to put in 2 (two) sets of requisites for service of notice upon the respondents in usual course and through registered post.”

3. That it is stated that at the time of filing of the Writ Petition, though the inaction of the respondents in taking necessary steps to cancel their approval to the amendment of constitution of Bipani Bitan Merchants Welfare Agency, Chittagong removing sub-section (ভ) of section 16 of the constitution was challenged, however the very approval of the same i.e. repeal of said sub-section was not challenged, and also a direction upon the respondents was not sought for replacing the said provision. It was lapsed due to bonafide mistake of the learned Advocate of the petitioners; for which the petitioners and the merit of this case should not let suffer. Under the circumstances, for proper and effective disposal of this case, a supplementary Rule is necessary to be issued in the following manner, otherwise multiplicity of the cases will arise, and mere disposal of this writ petition may not bring full and effective relief to the petitioners as well as to the entire subject matter in dispute—

AND

IN THE MATTER OF :

Approval by the respondent No. 10 as to repeal of উপধারা ১৬(ভ) of বিপনী বিতান মার্চেন্টস ওয়েলফেয়ার কমিটির (বিপনী বিতান ব্যবসায়ী কল্যাণ সংস্থা) গঠনতন্ত্র vide স্মারক নং- ৪১.০১.১৫০০.০৮৫.০০.০০০.১৪ ৭৮৯ তারিখ ২৭/৫/২০১৪ issued under the signature of the respondent No. 5 (Annexure- E-1) in pursuant to the decision dated 2.12.2013 of the respondent No. 6 (Annexure- D-1) and forwarding letter dated 27.02.2014 (Annexure- E).

AND

IN THE MATTER OF :

Direction upon the respondents to restore উপধারা ১৬(ভ) of বিপনী বিতান মার্চেন্টস ওয়েলফেয়ার কমিটির (বিপনী বিতান ব্যবসায়ী কল্যাণ সংস্থা) গঠনতন্ত্র reading out “সভাপতি ও সাধারণ সম্পাদক পদের যে কোন একটি কিংবা উভয় পদ মিলে পর পর দুইবার নির্বাচিত ব্যক্তি পরবর্তী নির্বাচনে কোন পদেই প্রতিশ্রুতি করতে পারবেন না।” which was repealed earlier vide স্মারক নং- ৪১.০১.১৫০০.০৮৫.০০.০০০.১৪ ৭৮৯ তারিখ ২৭/৫/২০১৪

issued under the signature of the respondent No. 5 (Annexure- E-1) in pursuant to the decision dated 2.12.2013 of the respondent No. 6 (Annexure- D-1) and forwarding letter dated 27.02.2014 (Annexure- E).

4. That it is submitted that in view of the above, a supplementary Rule may kindly be issued in the aforesaid manner for ends of justice and also for securing the effective adjudication of this case in order to avoiding multiplicity of the cases and ensuring complete and disposal of proper the subject matter of this case. However, the terms of this supplementary Rule shall not impair the main purpose and merit of this case, and also not bring any substantive change in the nature and character of this writ petition. As such, a supplementary Rule may kindly be issued upon the respondents for ends of justice.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to issue supplementary Rule Nisi calling upon the respondents to show cause as to why the impugned approval by the respondent No. 10 as to repeal of উপধারা ১৬(ভ) of বিপনী বিতান মার্চেন্টস ওয়েলফেয়ার কমিটির (বিপনী বিতান ব্যবসায়ী কল্যাণ সংস্থা) গঠনতন্ত্র vide স্মারক নং- ৪১.০১.১৫০০.০৮৫.০০.০০০.১৪ ৭৮৯ তারিখ ২৭/৫/২০১৪ issued under the signature of the respondent No. 5 (Annexure- E-1) in pursuant to the decision dated 2.12.2013 of the respondent No. 6 (Annexure- D-1) and forwarding letter dated 27.02.2014 (Annexure- E) shall not be declared to have been done/passed without lawful authority and is of no legal effect, and why the respondents shall not be directed to restore উপধারা ১৬(ভ) of বিপনী বিতান মার্চেন্টস ওয়েলফেয়ার কমিটির (বিপনী বিতান ব্যবসায়ী কল্যাণ সংস্থা) গঠনতন্ত্র reading out “সভাপতি ও সাধারণ সম্পাদক পদের যে কোন একটি কিংবা উভয় পদ মিলে পর পর দুইবার নির্বাচিত ব্যক্তি পরবর্তী নির্বাচনে কোন পদেই প্রতিনিধিত্ব করতে পারবেন না।” which was repealed earlier vide স্মারক নং- ৪১.০১.১৫০০.০৮৫.০০.০০০.১৪ ৭৮৯ তারিখ ২৭/৫/২০১৪ issued under the signature of the respondent No. 5 (Annexure- E-1) in pursuant to the decision dated 2.12.2013 of the respondent No. 6 (Annexure- D-1) and forwarding letter dated 27.02.2014 (Annexure- E) for ends of justice and /or pass such other or further order or orders as your Lordships may seem fit and proper.

And for this act kindness, the applicant as in duty bound shall ever pray.

AFFIDAVIT

I, Alhaj Md. Mustafizur Rahman, son of late Md. Gunnu Mia and Alhaj Bilkis Khatun, of 198/B, Biponi Bitan, Police Station: Kotwali, District: Chittagong, at present No.3 Harish Dutta Lane, Nandonkanon, Post Office: Sadar- 4000, Police Station: Kotwali, District: Chittagong. Death of Birth-15.04.1946 by faith- Muslim, by profession- Business, by Nationality-Bangladeshi, National ID No. 19491594122421927 do hereby solemnly affirm and say as follows :—

01. That I am the petitioner No. 1- applicant of this petition and as such acquainted with the facts and circumstances of the case and competent to swear this Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of February, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile :

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

CHAPTER 10

First Appeal, Miscellaneous Appeal and different Applications

Against the judgment and decree, First Appeal can be filed. Against the appealable order, First Miscellaneous Appeal can be filed. In the appeal, the aggrieved party may file application for stay, injunction, status-quo and for any appropriate interim relief. Appeals can be admitted by the Single Bench or Division Bench of the High Court Division depending on the suit value as provided under the Civil Courts Act, 1887. In appeal, the appellant needs to file paper book. Sometimes, submission of paper book may be exempted / dispensed with suo moto or on the application of the parties but subject to the satisfaction of the Court. Only Court can pass order dispensing with the paper book. Some formats of First Appeal, First Miscellaneous Appeal and Applications seeking interim relief are given below—

Sample

DISTRICT : DHAKA.

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

<u>CIVIL RULE NO.</u>	<u>OF 2017.</u>
<u>F. M. A. T. NO.</u>	<u>OF 2017.</u>
<u>F. M. A. NO.</u>	<u>OF 2017.</u>

IN THE MATTER OF:

Memorandum of Appeal against order.

AND

IN THE MATTER OF:

Arfan Builders Limited, of 129, Motijheel C/A, Thana-Motijheel, District- Dhaka, represented by its Executive Director Habibur Rahman.

---- **Plaintiff – Appellant .**

–VERSUS–

1. Nurtaj,
 Being substituted by-
 1(ka) Rajmat Bhuiyan,
 1(kha) Rahima Begum,
 1(ga) Shamsun Nahar,

- 1(gha) Nurunnahar,
 1(umo) Fatema Begum,
 Children of late Nurtaj,
 1(cha) Golapi Begum, wife of late Nurtaj,
2. Montaj Uddin,
 Children of late Mohor Ali, of 214, Bhuiya Para,
 Meradia, Post- Khilgaon, Thana- Khilgaon,
 presently- Rampura, District- Dhaka.

---- **Principal-Defendants – Respondents.**

AND

IN THE MATTER OF :

3. Firoz Mia,
 4. Ful Mia,
 5. Chandra Banu,
 6. Fatema Begum,
 7. Somortabanu,
 All are children of late Abdur Rahim, of 166,
 Meradia, Thana- Khilgaon, at present: Rampura,
 Dhaka.
8. Shamsul Hoque Bhuiyan, son of late Mofiz Uddin
 Bhuiyan, of 207 Meradia, Thana- Khilgaon, at
 present: Rampura, Dhaka.
9. Firoz Mia, son of late Abdul Rahim, of 166/2
 Meradia, Thana- Khilgaon, at present: Rampura,
 Dhaka.
10. Salah Uddin, son of late Abdul Motaleb, of 211
 Meradia, Thana- Khilgaon, at present: Rampura,
 Dhaka.
11. Director General, Land Jarip and Record
 Department, Thana- Tejgaon, Dhaka.
12. Settlement Officer, Settlement Officer Bhaban,
 Thana- Tejgaon, Dhaka.
13. Government of Bangladesh, represented by the
 Deputy Commissioner, Dhaka, of Dhaka
 Collectorate Building, Thana- Kotwali, District-
 Dhaka.
14. Assistant Commissioner of Land, Tejgaon Circle,
 Dhaka, of 14/2, Topkhana Road, opposite side of
 Press Club, Thana- Ramna, Dhaka.

---- **Proforma-Defendants – Respondents.**

APPEAL VALUED AT TK. 2,94,00,000/-

SUIT VALUED AT TK. 2,94,00,000/-

Being aggrieved by and dissatisfied with the order No. 45 dated 10.08.2017 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 576 of 2011 rejecting the application filed by the plaintiff-appellant under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure, 1908, the plaintiff-appellant begs to file this Memorandum of Appeal on the following amongst others—

—G R O U N D S—

- I. For that the learned court below erred in law and in facts by rejecting the application filed by the plaintiff-appellant under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure, 1908 and the same is not tenable in the eye of law. Hence, the same is liable to be set-aside.
- II. For that the impugned order No. 45 dated 10.08.2017 has been passed on surmise and conjecture without considering facts and circumstances of the case. Hence, the same is liable to be set-aside.
- III. For that the learned court below committed an error of law by rejecting the application for temporary injunction of the plaintiff-appellant merely on the ground that the application for temporary injunction was filed 5 (five) years ago and as such the same has already lost its necessity. In doing so, the learned court miserably failed to consider that though the plaintiff-appellant being in possession of the suit land filed the application for injunction 5 (five) years ago, show cause for 15 (fifteen) days was issued thereon and the same was duly served upon the defendants-opposite parties, thereafter the case became ready for *ex parte* hearing; subsequently after 4 (four) years 6 (six) persons came to be added as defendants in the suit which was ultimately allowed on 2.01.2017. Being added as defendants thereon, the defendant-respondents are threatening the plaintiff-appellant to evict and create disturbance on the peaceful possession of the plaintiff-appellant in the suit land. Being aggrieved and apprehended by the defendants-respondents the plaintiff-appellant moved an application on 6.06.2017 under section 151 for temporary injunction, against which a show cause for 10 (ten) days was issued by the trial court below. Subsequently, on 22.06.2017 the plaintiff again moved an application under section 151 for hearing the application for temporary injunction; against the same the learned court without considering the fresh cause of action and continuation of the *prima facie* case very illegally and arbitrarily passed the impugned order which should not be tenable in the eye of law. Hence, the impugned order is liable to be set-aside.
- IV. For that the learned court below failed to understand that since none of the defendants-respondents appeared in the case for more than 5 (five) years even after serving the summons/notices upon them properly and the plaintiff-appellant is in possession of the suit

land and there was no disturbance by any corner, therefore the application for injunction was not pursued earlier by the learned court below. When the defendants-respondents posted threat upon the plaintiff-appellant to evict them, the plaintiff-appellant immediately filed the application under section 151 for injunction. But the learned court below without considering the fresh cause of action and necessity of injunction rejected passed by the impugned order without applying judicial mind. Hence, the impugned order is liable to be set-aside.

- V. For that the learned court below committed an error of law without considering the point of law that an injunction application can be moved by the affected party anytime whenever cause of danger/disturbance/dispossession becomes so imminent to the applicant. As such, the plaintiff-appellant has a very prima facie arguable case and merit in praying for temporary injunction in this case against the defendants-respondents, but the learned court below failed to appreciate this point of law. Hence, the impugned order is liable to be set-aside.
- VI. For that the learned court below failed to consider the prima facie case of the plaintiff-appellant that the plaintiff-appellant is in the possession of the suit land and it has already invested a lot in the promotion and development of the suit land. Under the circumstances, if the plaintiff-appellant would be evicted by the defendants or the peaceful possession of the plaintiff-appellant in the suit land would be disturbed or nature and character of the suit land would be changed by the defendants-respondents, the plaintiff-appellant will suffer irreparable loss and damage which may not be compensated in terms of money. Hence, the impugned order is liable to be set-aside.
- VII. For that there are other good grounds for allowing the appeal by setting aside the impugned Order passed by the learned Court below. Hence, the same is liable to be set-aside.

CERTIFICATE

I, do hereby certify that I have gone through the records of the case and the grounds set forth hereinabove are good grounds for First Miscellaneous Appeal.

(Shahadat Hossain)

Advocate

Supreme Court of Bangladesh

List of papers :

1. This Memo of Appeal.
2. Vokatnama.
3. Impugned Order.
4. 2nd Judge's copy.

SampleDISTRICT : DHAKA.

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

CIVIL RULE NO. _____ OF 2017.

F. M. A. T. NO. 590 OF 2017.

F. M. A. NO. _____ OF 2017.

IN THE MATTER OF :

An application for temporary injunction.

A N D**IN THE MATTER OF :**

Arfan Builders Limited, of 129, Motijheel C/A, Thana-
 Motijheel, District- Dhaka, represented by its Executive
 Director Habibur Rahman.

---- **Plaintiff – Appellant-Petitioner.**

–VERSUS–

1. Nurtaj,

Being substituted by-

1(ka) Rajmat Bhuiyan,

1(kha) Rahima Begum,

1(ga) Shamsun Nahar,

1(gha) Nurunnahar,

1(umo) Fatema Begum,

Children of late Nurtaj,

1(cha) Golapi Begum, wife of late Nurtaj,

2. Montaj Uddin,

Children of late Mohor Ali, of 214, Bhuiya Para,
 Meradia, Post- Khilgaon, Thana- Khilgaon,
 presently- Rampura, District- Dhaka.

---- **Principal-Defendants –**
Respondents.

AND**IN THE MATTER OF :**

3. Firoz Mia,
4. Ful Mia,
5. Chandra Banu,
6. Fatema Begum,
7. Somortabanu,
All are children of late Abdur Rahim, of 166, Meradia, Thana- Khilgaon, at present: Rampura, Dhaka.
8. Shamsul Hoque Bhuiyan, son of late Mofiz Uddin Bhuiyan, of 207 Meradia, Thana- Khilgaon, at present: Rampura, Dhaka.
9. Firoz Mia, son of late Abdur Rahim, of 166/2 Meradia, Thana- Khilgaon, at present: Rampura, Dhaka.
10. Salah Uddin, son of late Abdur Motaleb, of 211 Meradia, Thana- Khilgaon, at present: Rampura, Dhaka.
11. Director General, Land Jarip and Record Department, Thana- Tejgaon, Dhaka.
12. Settlement Officer, Settlement Officer Bhaban, Thana- Tejgaon, Dhaka.
13. Government of Bangladesh, represented by the Deputy Commissioner, Dhaka, of Dhaka Collectorate Building, Thana- Kotwali, District- Dhaka.
14. Assistant Commissioner of Land, Tejgaon Circle, Dhaka, of 14/2, Topkhana Road, opposite side of Press Club, Thana- Ramna, Dhaka.

---- **Proforma-Defendants – Respondents.**

APPEAL VALUED AT TK. 2,94,00,000/-
SUIT VALUED AT TK. 2,94,00,000/-

To,
Mr. Justice Surendra Kumar Sinha, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the plaintiff-petitioner most respectfully :—

S H E W E T H :

1. That the above noted First Miscellaneous Appeal has been directed challenging the propriety of the order No. 45 dated 10.08.2017 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 576 of 2011 rejecting the application filed by the plaintiff-appellant under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure, 1908.
2. That the plaintiff-appellant-petitioner filed a Title Suit being No. 576 of 2011 for declaration of title and correction of record stating *inter alia* that the plaintiff-appellant-petitioner is the owner and possessor of the suit land by way of purchase through executing registered sale deed. Land situated at CS Dag No. 534 and 774 originally belonged to Shohor Ali Bhuiyan who died leaving behind one son Fateh Ali and Khotija Nesa. Subsequently, said Fateh Ali died leaving behind a son Mohor Ali and a daughter Abedon Nesa. Said Abedon Nesa sold 1.42 acre land out of 4.27 acre to Abdur Rahim, Chan Mia, Abdul Motaleb and Rustom Ali vides registered sale deed No. 4011 dated 6.11.1945. On the other hand, said Khotija Nesa sold .70 acre (which she got through family partition) to said Abdur Rahim, Chan Mia, Abdul Motaleb and Rustom Ali vides registered sale deed No. 3924 dated 23.11.1939. By this way they became owners of total 2.12 acre land in CS Dag No. 225 and they along with one Monir Uddin basing on their mutual understanding made a partition of land amongst themselves and in this regard they also executed a registered partition deed being No. 2044 dated 15.04.1946. Thereafter, said Mohor Ali died leaving behind a wife Shorfunnesa and two sons being the defendant Nos. 1 and 2, they sold their respective portion of land (being .43 acre and .43 acre) to the plaintiff company vide registered sale deed No. 7537 dated 20.05.1987, and since then the plaintiff is in possession of the suit land. On the other hand, said Monir Uddin transferred his land to his son Abu Syeed by executing a registered heba-bil ewaz being No. 31451 dated 27.10.1977. Said Abu Syeed sold his land to the plaintiff company by executing a registered sale deed No. 1358 dated 3.04.1991. On the other side, said Chan Mia died leaving behind his three sons Shiraj, Shajahan, Falu and a wife Falani who sold their land to Abdul Motaleb and Rustom Ali by registered sale deed No. 20455 dated 12.06.1978. By this way, said Rustom Ali got total .43 acre land and sold the same to the plaintiff by executing a registered sale deed No. 14428 dated 8.11.1987. On the other hand, said Abdul Motaleb died leaving behind four sons Salauddin, Alauddin, Faruk and Jahirul who subsequently sold their portion of land to the plaintiff by registered sale deed No. 2787 dated 30.06.1992 by this way the plaintiff company became the sole owner and possessor of the suit land. Certified copy of the plaint of the above suit is annexed hereto and marked as **ANNEXURE- "A"**.
3. That at the time of filing of the suit, the petitioner also filed an application under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure, 1908 praying for temporary injunction. Certified copy of the said application for temporary injunction is annexed hereto and marked as **ANNEXURE- "B"**.
4. That after hearing the said application for injunction, the learned court below issued show cause against the defendants, and the show cause notices were duly returned as being served upon them, but none of the defendants appeared in the case for a long period of time

and ultimately the case was ready for exparte hearing. Subsequently, six persons filed an application for addition of party as defendants on 17.11.2015 which was allowed by the learned trial court below on 19.11.2015. Certified copy of the application of addition of party is annexed hereto and marked as **Annexure- “C”**.

5. That against the same order dated 19.11.2015, the plaintiff filed a Civil Revision being No. 111 of 2016 before the learned District Judge, 1st Court, Dhaka and the same was transferred to the learned Additional District Judge, 1st Court, Dhaka. Certified copy of the learned District Judge, 1st Court, Dhaka is annexed hereto and marked as **Annexure- “D”**.
6. That said revision application was ultimately rejected by the learned Additional District Judge, 1st Court, Dhaka vides judgment and order dated 22.11.2016. Certified copy of the judgment and order dated 22.11.2016 is annexed hereto and marked as **Annexure- “E”**.
7. That subsequently, the petitioner also filed one application for substitution of party of the defendant No. 1 and other application for addition of Assistant Commissioner of Land, Tejgaon Circle, Dhaka in the suit. Certified copies of two applications are annexed hereto and marked as **Annexure- “F” & “F-1”**.
8. That the added defendants also filed written statement and a written objection in the suit alleging several false allegations against the plaintiff. Certified copies of the written statement and the written objection are annexed hereto and marked as **Annexure- “G” & “G-1”**.
9. That subsequently on 6.06.2017, the plaintiff filed an application under section 151 of the Code of Civil Procedure whereupon a show cause for 10 (ten) days was issued against the defendants vides order dated 6.06.2017. Certified copy of the application dated 6.06.2017 is annexed hereto and marked as **Annexure- “H”**.
10. That getting no positive result on the said application dated 6.06.2017 and observing the imminent threat of being dispossessed and disturbed by the defendants, the plaintiff again on 22.06.2017 filed an application under section 151 praying for injunction. Certified copy of the application dated 22.06.2017 is annexed hereto and marked as **Annexure- “I”**.
11. Thereafter, upon hearing of the said application, the learned court below passed the impugned order No. 45 dated 10.08.2017 rejecting the application filed by the plaintiff-appellant under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure, 1908; against which the plaintiff-appellant-petitioner filed this appeal.
12. That it is submitted that the learned court below erred in law and in facts by rejecting the application filed by the plaintiff-appellant under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure, 1908 and the same is not tenable in the eye of law. Hence, the same is liable to be set-aside.
13. That it is submitted that the impugned order No. 45 dated 10.08.2017 has been passed on surmise and conjecture without considering facts and circumstances of the case. Hence, the defendants-respondents-opposite parties may kindly be restrained by an order of injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.

14. That it is submitted that the learned court below committed an error of law by rejecting the application for temporary injunction of the plaintiff-appellant merely on the ground that the application for temporary injunction was filed 5 (five) years ago and as such the same has already lost its necessity. In doing so, the learned court miserably failed to consider that though the plaintiff-appellant being in possession of the suit land filed the application for injunction 5 (five) years ago, show cause for 15 (fifteen) days was issued thereon and the same was duly served upon the defendants-opposite parties, thereafter the case became ready for *ex parte* hearing; subsequently after 4 (four) years 6 (six) persons came to be added as defendants in the suit which was ultimately allowed on 2.01.2017. Being added as defendants thereon, the defendant-respondents are threatening the plaintiff-appellant to evict and create disturbance on the peaceful possession of the plaintiff-appellant in the suit land. Being aggrieved and apprehended by the defendants-respondents the plaintiff-appellant moved an application on 6.06.2017 under section 151 for temporary injunction, against which a show cause for 10 (ten) days was issued by the trial court below. Subsequently, on 22.06.2017 the plaintiff again moved an application under section 151 for hearing the application for temporary injunction; against the same the learned court without considering the fresh cause of action and continuation of the *prima facie* case very illegally and arbitrarily passed the impugned order which should not be tenable in the eye of law. Hence, the defendants-respondents-opposite parties may kindly be restrained by an order of injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.
15. That it is submitted that the learned court below failed to understand that since none of the defendants-respondents appeared in the case for more than 5 (five) years even after serving the summons/notices upon them properly and the plaintiff-appellant is in possession of the suit land and there was no disturbance by any corner, therefore the application for injunction was not pursued earlier by the learned court below. When the defendants-respondents posted threat upon the plaintiff-appellant to evict them, the plaintiff-appellant immediately filed the application under section 151 for injunction. But the learned court below without considering the fresh cause of action and necessity of injunction rejected passed by the impugned order without applying judicial mind. Hence, the defendants-respondents-opposite parties may kindly be restrained by an order of injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.
16. That it is submitted that the learned court below committed an error of law without considering the point of law that an injunction application can be moved by the affected party anytime whenever cause of danger/disturbance/dispossession becomes so imminent to the applicant. As such, the plaintiff-appellant has a very *prima facie* arguable case and merit in praying for temporary injunction in this case against the defendants-respondents, but the learned court below failed to appreciate this point of law. Hence, the defendants-respondents-opposite parties may kindly be restrained by an order of injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.

17. That it is submitted that the learned court below failed to consider the prima facie case of the plaintiff-appellant that the plaintiff-appellant is in the possession of the suit land and it has already invested a lot in the promotion and development of the suit land. Under the circumstances, if the plaintiff-appellant would be evicted by the defendants or the peaceful possession of the plaintiff-appellant in the suit land would be disturbed or nature and character of the suit land would be changed by the defendants-respondents, the plaintiff-appellant will suffer irreparable loss and damage which may not be compensated in terms of money. Hence, the defendants-respondents-opposite parties may kindly be restrained by an order of injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.
18. That it is submitted that the learned court below hopelessly failed to consider that the plaintiff-appellant has filed this suit for declaration of title and correction of record being in possession thereof. As such, the plaintiff-appellant has got prima facie case for getting an order of injunction against the defendants-respondents from the learned court below, but the learned court below failed to appreciate this point of law and very arbitrarily passed the impugned order. Hence, the defendants-respondents-opposite parties may kindly be restrained by an order of injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.
19. That it is submitted that the impugned order passed by the learned court below is ex-facie, illegal, malafide and the same has been passed without applying any judicial mind. Hence, the defendants-respondents-opposite parties may kindly be restrained by an order of injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.
20. That it is submitted that the learned court below failed to consider that the balance of convenience and inconvenience is totally in favour of the plaintiff company and if an order of temporary injunction is not granted in its favour, the plaintiff company will face irreparable loss and injury. Hence, the defendants-respondents-opposite parties may kindly be restrained by an order of injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.
21. That it is submitted that there are other good grounds for allowing the appeal by setting aside the impugned Order passed by the learned Court below. Hence, the defendants-respondents-opposite parties may kindly be restrained by an order of injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue a Rule calling upon the defendants –respondents-opposite parties to show cause as to why they should not be restrained by an order of temporary injunction from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land; and after hearing the parties and perusing the cause shown, if any, make the

Rule absolute and/or pass such other or further order or orders as this Honorable Court may seem fit and proper

AND

Pending hearing of the Rule be further pleased to pass an order of *ad-interim* injunction restraining the opposite parties from disturbing the peaceful possession of the plaintiff-appellant-petitioner in the suit land for ends of justice.

And for this act of kindness, the petitioner, as in duty bound, shall ever pray.

A F F I D A V I T

I, Hafizur Rahman, son of Mozibur Rahman and Hawa Begum, of Village- Kulpala, Post Office- Jagannatgonj Gat, Sarishabari, Jamalpur, having National ID Card No. 3918510075244, aged about- 34 years, by faith -Muslim, by occupation- Senior Executive Director of Eastern Housing Limited, by Nationality – Bangladeshi do hereby solemnly affirm and say as follows :—

01. That I am the tadbirkarak of this case and I am acquainted with the facts and circumstances of this case and as such I am competent to swear this Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)

Advocate
Membership # 3114

DEPONENT

The deponent is known to me
and identified by me.

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on this
theth day of August, 2017
at A.M./P.M.

(Shahadat Hossain)

Advocate
Membership # 3114
Hall Room No. 2,
Supreme Court Bar Association
Mobile : 01711-404339

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

SampleDISTRICT : DHAKA.

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

CIVIL RULE NO. _____ OF 2015.F. A. T. NO. _____ OF 2015.F. A. NO. _____ OF 2015.**Memorandum of Appeal from original decree.****A N D****IN THE MATTER OF :**

Janata Bank, Imamgonj Corporate Branch, 20
Imamgonj, P.S. Kotwali, District- Dhaka-1000;
represented by its Branch Manager.

---- **Defendant-Appellant.**

–VERSUS–

Habib Bank us Istanbul Turkey, Represented by its
recognized agent in Bangladesh Habib Bank up 53
Motijheel Commercial area Dhaka- 1000.

..... **Plaintiff-Respondent.**

APPEAL VALUED AT TK. 1,08,01,102.66/-

SUIT VALUED AT TK. 1,08,01,102.66/-

Being aggrieved by and dissatisfied with the judgment and decree dated 15.02.2015, decree signed on 19.02.2015 passed by the learned Joint District Judge, 3rd Court, Dhaka in Money Suit No. 28 of 2005 decreeing the suit in favour of the plaintiff-respondent on contest against the defendant-appellant through an analogous hearing with Title Suit No. 274 of 2004 renumbered as Title Suit No. 125 of 2009, the defendant-appellant begs to file this Memorandum of Appeal on the following amongst others—

–G R O U N D S–

- I. For that the impugned judgment and decree passed by the learned Joint District Judge, 3rd Court, Dhaka is bad in law as well as in facts. Hence, the impugned judgment and decree is liable to be set-aside.
- II. For that the learned court below erred in law by decreeing the suit in favor of the plaintiff-respondent and the same is not tenable in the eye of law. Hence, the impugned judgment and decree is liable to be set-aside.

- III. For that the learned court below hopelessly failed to realize that by a contract No. 001/2004 dated 02.06.2004 signed between a local company M/S Kabir Leather Limited (KLL) and M/S Insopelles Deri (Insopelles) of Turkey it was inter-alia agreed that Insopelles would import leather goods from the said KLL to be manufactured by KLL with the raw materials namely ‘Dressed Leathers’ to be supplied by the said foreign company Insopelles opened a letter of credit No. ITT001400006 dated 18.06.2004 through the plaintiff to import 400 pieces of leather coats worth US\$ 1,93,300.00 from the said KLL and KLL in turn under the said back to back arrangement opened a letter of credit No. 009704020005 dated 06.07.2004 to import Dressed Leather as raw materials to manufacture the said leather coats with a view to re-export to the said foreign company Insopelles. That thereafter in breach of the terms of the said letter of credit dated 06.07.2004 the said foreign company Insopelles, maliciously and fraudulently created false clearing documents and shipped non-conforming and inferior quality hairy leather in place of stipulated “dressed leather” only, and accordingly, on the basis of the findings of the Customs Authority and the post shipment inspection report submitted by the Eastern Surveyors of Z. Shah House (2nd Floor), 120, Motijheel C/A, Dhaka- 1000, the said KLL rejected the said non-conforming and inferior quality hairy leather and advised the said foreign company Insopelles again and again under clause 4 of the said letter of credit dated 18.06.2004 to conduct spot inspection and to take back their non-conforming exported raw materials, but the said foreign company Insopelles purposefully ignored the matter; and the learned court also failed to take this fact into consideration. Hence, the impugned judgment and decree is liable to be set-aside.
- IV. For that the learned court below hopelessly failed to realize that subsequently, thereafter the said local company KLL vehemently persuaded said foreign company Insopelles to give assurance to lift finished goods if the same is to be manufactured by their supplied inferior raw materials, but here also all efforts of the said local company KLL went in vain due to the pre-planned evil design of the said foreign company Insopelles, and they purposefully avoided the circumstances by failing of extending the validity of their letter of credit dated 18.06.2004. Therefore, the plaintiff bank has no authority or right to claim money from the defendant-appellant. Hence, the impugned judgment and decree is liable to be set-aside.
- V. For that the learned court below hopelessly failed to realize that being aggrieved with the non-compliance with the said agreement by the said foreign Company, Insopelles Deri (Insopelles) of Turkey the KLL filed the Title Suit No. 274 of 2004 renumbered as Title Suit No. 125 of 2009 before the learned Court below praying for (i) a decree declaring that the claim of said Insopelles Deri (Insopelles) of Turkey and its local agent for payment against their supply of nonconforming goods under the letter of credit No. 009704020005 dated 06.07.2004 is null and void and made without lawful authority and not binding upon it, and (ii) a decree of permanent injunction restraining this appellant bank from payment to the said Insopelles Deri (Insopelles) of Turkey and its local agent against the said letter of credit No. 009704020005 dated 06.07.2004. However, that suit was dismissed with an analogous hearing with the instant suit; against which said KLL filed Title Appeal being No. 201 of 2015 before the learned District Judge, Dhaka, which is now pending.

- VI. For that the learned court below completely failed to understand that the plaintiff in collusion with the said foreign company Insopelles have avoided the path of law, equity and good conscience and resorted to unlawful and illegal way for pressurizing the defendant for immediate payment against the said rejected inferior quality goods which were exported under malicious and fraudulent documentations, and as such the plaintiff's claims are not tenable in law. Hence, the impugned judgment and decree is liable to be set-aside.
- VII. For that the the learned court below completely failed to appreciate that the suit suffers lack of proper and necessary parties since the importer (exporter under back to back LC) Kabir Leathers Ltd, 180, Hazaribagh, Dhaka- 1209 and exporter (importer under back to back LC) Insopelles Deri (Insopelles) of Turkey and its local agent were not parties to this suit; so the claim of the plaintiff is unenforceable; and as such the plaintiff's claims are not tenable in law. Hence, the impugned judgment and decree is liable to be set-aside.
- VIII. For that the the learned court below completely failed to appreciate that nowhere in the plaint the plaintiff asserted that it has already made any payment to the Insopelles Deri (Insopelles) of Turkey and its local agent were not parties to this suit; so the claim of the plaintiff is unenforceable and it has no locus standi to claim by dint of its individual position as it is not claiming the said amount on behalf of the said the Insopelles Deri (Insopelles); and as such the plaintiff's claims are not tenable in law. Hence, the impugned judgment and decree is liable to be set-aside.
- IX. For that the learned court below has failed to apply the correct proposition of law in deciding the matter and passed the impugned order based on surmise and conjecture. Hence, the impugned judgment and decree is liable to be set-aside.
- X. For that the impugned judgment and decree is *ex-facie*, illegal, arbitrary and malafide. Hence, the impugned judgment and decree is liable to be set-aside.

CERTIFICATE

I, do hereby certify that I have gone through the records of the case and the grounds set forth hereinabove are good grounds for First Appeal.

(Shahadat Hossain)

Advocate

Supreme Court of Bangladesh

List of papers :

1. This Memo of Appeal.
2. Vokatatnama.
3. Impugned judgment and decree.
4. 2nd Judge's copy.

SampleDISTRICT : DHAKA.

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

CIVIL RULE NO. _____ OF 2015.

F. A. T. NO. _____ OF 2015.

F. A. NO. _____ OF 2015.

IN THE MATTER OF :

An application for stay.

A N D**IN THE MATTER OF :**

Jibon Bank, Imamgonj Corporate Branch, 40 Imamgonj,
 P.S. Kotwali, District- Dhaka-1000; represented by its
 Branch Manager.

---- **Defendant-Appellant-Petitioner.****—VERSUS—**

Kabir Bank us Istanbul Turkey, Represented by its
 recognized agent in Bangladesh Kabir Bank up 23
 Motijheel Commercial area Dhaka-1000.

..... **Plaintiff-Respondent-Opposite Party.****APPEAL VALUED AT TK. 1,08,01,102.66/-****SUIT VALUED AT TK. 1,08,01,102.66/-**

To,

Mr. Justice Surendra Kumar Sinha, the Hon'ble Chief Justice of Bangladesh and his Companion
 Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most
 respectfully :—

S H E W E T H :

1. That the above noted First Appeal has been directed being aggrieved by and dissatisfied with the judgment and decree dated 15.02.2015, decree signed on 19.02.2015 passed by the learned Joint District Judge, 3rd Court, Dhaka in Money Suit No. 28 of 2005 decreeing the suit in favour of the plaintiff-respondent on contest against the defendant-appellant through an analogous hearing with Title Suit No. 274 of 2004 renumbered as Title Suit No. 125 of 2009.

2. That the plaintiff-opposite party has filed Money Suit No. 28 of 2005 before the learned Joint District Judge, 3rd Court, Dhaka for recovery of an amount Tk. 1,08,01,102.66 contending inter-alia that at the request one Kabir Leathers Limited (referred to as KLL) the defendant bank opened an Irrevocable Documentary Back to Back L/C No. 009704020005 dated 06.07.2014 in favour of INSOPELLES Deri Mamulleri San (referred to as exporter / supplier / seller / beneficiary) for an amount of US\$1,62,500 + 10% for import of double face leathers as raw materials for manufacturing women leather coats on condition, inter area, that bills shall be drawn at 60 days after sight. The plaintiff is a negotiating bank on behalf of said seller /exporter. The ILC/BBLC also directed in the same way which is subject to Uniform Customs and Practice Documentary Credits-500 (UCPDC). Thereafter, as per ILC the goods were shipped and documents were submitted to the plaintiff who forwarded the same to the defendant on 20.07.2004 for acceptance and the defendant received the same on 24.07.2004. On 30.08.2004 by a swift message the defendant confirmed the acceptance and maturity date of payment on 01.10.2004 of said ILC. Thereby the defendant was bound to pay the L/C amount to the plaintiff, but it refused to pay so which is violation of Article 9 of UCPDC-500. On that premise, the plaintiff filed Artha Rin Suit on 31.10.2004 being No.796 of 2005 before the Artha Rin Adalat Ain, 4th Court, Dhaka which was transfer to this Court on the ground that the suit does not fault within the jurisdiction of Civil Court and thereafter that Artha Rin Suit was renumbered as Money Suit No. 28 of 2005. Copy of the plaint is annexed hereto and marked as **ANNEXURE- “A”**.
3. That the defendant contested the suit by filing written statement and denying all the materials allegation, stating inter-alia that—
 - (a) that by a contract No.001/2004 dated 02.06.2004 signed between local company M/S Kabir Leather Limited (KLL) and M/S Insopelles Deri (Insopellers) of Turkey it was inter alia agreed that Insopelles would import leather goods from the said KLL to be manufactured by KLL with the raw materials namely ‘Dressed Leather’ to be supplied by the said foreign company Insopelles, on back to back letter of credit basis, and accordingly, Insopelles opened a letter of credit No. ITT001400006 dated 18.06.2004 through the plaintiff Habib Bank Ltd., Istanbul. Turkey to import 400 pieces of leather coats worth US\$ 1,93,300.00 from the said KLL and KLL in turn under the said back to back arrangement opened a letter of credit No. 009704020005 dated 06.07.2004 to import Dressed Leather as raw materials to manufacture the said leather coats with a view to re-export to the said foreign company Insopellers.
 - (b) That thereafter in breach of the terms of the said letter of credit dated 06.07.2004 the said foreign company Insopelles, maliciously and fraudulently created false clearing documents and shipped non-conforming and inferior quality hairy leather in place of stipulated “dressed leather” only, and accordingly, on the basis of the findings of the Customs Authority and the post shipment inspection report-submitted by the Eastern Surveyors of Z. Shah House (2 Floor), 120, Motijheel C/A, Dhaka-1000, the said KLL rejected the said non conforming and inferior quality hairy leather and advised the said foreign company Insopelles again and again under clause 4 of the said letter

of credit dated 18.06.2004 to conduct spot inspection and to take back their non-conforming exported raw materials, but the said foreign company Insopelles purposefully ignored the matter.

- (c) That thereafter the said local company KLL vehemently persuaded said foreign company Insopelles to give assurance to lift finished goods if the same is to be manufactured by their supplied inferior raw materials, but here also all efforts of the said local company KLL went in vain due to the pre-planned evil design of the said foreign company Insopelles, and they purposefully avoided the circumstances by failing to extend the validity of their letter of credit dated 18.06.2004 which expired on 30.08.2004.
- (d) That the plaintiff in collusion with the said foreign company Insopelles have avoided the path of law, equity and good conscience and resorted to unlawful and illegal pressurizing the defendant for immediate payment against the said rejected inferior-quality goods which were exported under malicious and fraudulent documentations, and as such the plaintiffs claims are not tenable in law.

Copy of the written statement is annexed hereto and marked as **Annexure- “B”**.

- 4. That after hearing the parties and perusing their documents the learned Court below decreed the suit in favour of the plaintiff vide aforesaid impugned judgment and decree.
- 5. That on the other hand said Kabir Leathers Limited filed another Suit being Title Suit No. 274 of 2004 renumbered as Title Suit No. 125 of 2009 before the learned Court below against the instant plaintiff and defendant along with said M/S. Insopelles Deri, Mamullei San praying for (i) a decree declaring that the claim of the defendant Nos. 1-2 for payment against their supply of nonconforming goods under the letter of credit No. 009704020005 dated 06.07.2004 is null and void and made without lawful authority and not binding upon the plaintiff, and (ii) a decree of permanent injunction restraining the defendant No. 3 from payment to the defendants Nos. 1-2 against the said letter of credit No. 009704020005 dated 06.07.2004. On analogous hearing of the instant suit and the aforesaid Title Suit No. 125 of 2009, the learned Court below dismissed the said Title Suit No. 125 of 2009 vide judgment and decree dated 5.02.2015, decree signed on 18.02.2015; against which said Kabir Leathers Limited file Title Appeal being No. 201 of 2015 before the Court of learned District Judge, Dhaka, which is now pending. Copies of said judgment and decree dated 5.02.2015, decree signed on 18.02.2015 are annexed hereto and marked as **Annexure- “C” and “C-1”**.
- 6. That it is submitted that the impugned judgment and decree passed by the learned Joint District Judge, 3rd Court, Dhaka is bad in law as well as in facts. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.
- 7. That it is submitted that the learned court below erred in law by decreeing the suit in favor of the plaintiff-respondent and the same is not tenable in the eye of law. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.
- 8. That it is submitted that the learned court below hopelessly failed to realize that by a contract No. 001/2004 dated 02.06.2004 signed between a local company M/S Kabir

Leather Limited (KLL) and M/S Insopelles Deri (Insopelles) of Turkey it was inter-alia agreed that Insopelles would import leather goods from the said KLL to be manufactured by KLL with the raw materials namely ‘Dressed Leathers’ to be supplied by the said foreign company Insopelles opened a letter of credit No. ITT001400006 dated 18.06.2004 through the plaintiff to import 400 pieces of leather coats worth US\$ 1,93,300.00 from the said KLL and KLL in turn under the said back to back arrangement opened a letter of credit No. 009704020005 dated 06.07.2004 to import Dressed Leather as raw materials to manufacture the said leather coats with a view to re-export to the said foreign company Insopelles. That thereafter in breach of the terms of the said letter of credit dated 06.07.2004 the said foreign company Insopelles, maliciously and fraudulently created false clearing documents and shipped non-conforming and inferior quality hairy leather in place of stipulated “dressed leather” only, and accordingly, on the basis of the findings of the Customs Authority and the post shipment inspection report submitted by the Eastern Surveyors of Z. Shah House (2nd Floor), 120, Motijheel C/A, Dhaka- 1000, the said KLL rejected the said non-conforming and inferior quality hairy leather and advised the said foreign company Insopelles again and again under clause 4 of the said letter of credit dated 18.06.2004 to conduct spot inspection and to take back their non-conforming exported raw materials, but the said foreign company Insopelles purposefully ignored the matter; and the learned court also failed to take this fact into consideration. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.

9. That it is submitted that the learned court below hopelessly failed to realize that subsequently, thereafter the said local company KLL vehemently persuaded said foreign company Insopelles to give assurance to lift finished goods if the same is to be manufactured by their supplied inferior raw materials, but here also all efforts of the said local company KLL went in vain due to the pre-planned evil design of the said foreign company Insopelles, and they purposefully avoided the circumstances by failing of extending the validity of their letter of credit dated 18.06.2004. Therefore, the plaintiff bank has no authority or right to claim money from the defendant-appellant. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.
10. That it is submitted that the learned court below hopelessly failed to realize that being aggrieved with the non-compliance with the said agreement by the said foreign Company, Insopelles Deri (Insopelles) of Turkey the KLL filed the Title Suit No. 274 of 2004 renumbered as Title Suit No. 125 of 2009 before the learned Court below praying for (i) a decree declaring that the claim of said Insopelles Deri (Insopelles) of Turkey and its local agent for payment against their supply of nonconforming goods under the letter of credit No. 009704020005 dated 06.07.2004 is null and void and made without lawful authority and not binding upon it, and (ii) a decree of permanent injunction restraining this appellant bank from payment to the said Insopelles Deri (Insopelles) of Turkey and its local agent against the said letter of credit No. 009704020005 dated 06.07.2004. However, that suit was dismissed with an analogous hearing with the instant suit; against which said KLL filed Title Appeal being No. 201 of 2015 before the learned District Judge, Dhaka, which is now pending. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.

11. That it is submitted that the learned court below completely failed to understand that the plaintiff in collusion with the said foreign company Insopelles have avoided the path of law, equity and good conscience and resorted to unlawful and illegal way for pressurizing the defendant for immediate payment against the said rejected inferior quality goods which were exported under malicious and fraudulent documentations, and as such the plaintiff's claims are not tenable in law. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.
12. That it is submitted that the the learned court below completely failed to appreciate that the suit suffers lack of proper and necessary parties since the importer (exporter under back to back LC) Kabir Leathers Ltd, 220, Hazaribagh, Dhaka- 1209 and exporter (importer under back to back LC) Insopelles Deri (Insopelles) of Turkey and its local agent were not parties to this suit; so the claim of the plaintiff is unenforceable; and as such the plaintiff's claims are not tenable in law. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.
13. That it is submitted that the the learned court below completely failed to appreciate that nowhere in the plaint the plaintiff asserted that it has already made any payment to the Insopelles Deri (Insopelles) of Turkey and its local agent were not parties to this suit; so the claim of the plaintiff is unenforceable and it has no locus standi to claim by dint of its individual position as it is not claiming the said amount on behalf of the said the Insopelles Deri (Insopelles); and as such the plaintiff's claims are not tenable in law. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.
14. That it is submitted that the learned court below has failed to apply the correct proposition of law in deciding the matter and passed the impugned order based on surmise and conjecture. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.
15. That it is submitted that the impugned judgment and decree is *ex-facie*, illegal, arbitrary and malafide. Hence, the operation of impugned judgment and decree may kindly be stayed for ends of justice.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue Rule calling upon the plaintiff-respondent-opposite party to show cause as to why the impugned judgment and decree dated 15.02.2015, decree signed on 19.02.2015 passed by the learned Joint District Judge, 3rd Court, Dhaka in Money Suit No. 28 of 2005 decreeing the suit in favour of the plaintiff-respondent on contest against the defendant-appellant shall not be stayed; and after hearing the parties and perusing the cause shown, if any, make the Rule absolute and/or pass such other or further order or orders as your Lordships may seem fit and proper.

AND

Pending hearing of the Rule, be further pleased to stay operation of the said judgment and decree dated 15.02.2015, decree signed on 19.02.2015 passed by the learned Joint District Judge, 3rd Court, Dhaka in Money Suit No. 28 of 2005 decreeing the suit in favour of the plaintiff-respondent on contest against the defendant-appellant for ends of justice.

And for this act of kindness, the defendant-petitioner, as in duty bound, shall ever pray.

A F F I D A V I T

I, Md. Rezaul Hasan, son of Abdul Sattar Molla and Kahinur Begum, of House No. 38, Road-Palash Nagar Mirpure- 11, Post Office- Mirpure- 1216, Pallabi, Dhaka, aged about 32, by faith Muslim, by profession- Service, by Nationality- Bangladeshi, National ID No. 2696405463010 do hereby solemnly affirm and say as follows :—

1. That I am the Senior Executive Officer of the appellant-petitioner bank of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements of facts made above are true to my knowledge and matters of record, which I verily believe to be true and rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)

Advocate

DEPONENT

The deponent is known to me and identified by me.

Solemnly affirmed before me
By the said on thisth day of
....., 201 at the Supreme
Court premises, Dhaka
At A.M./P.M

(.....)

Advocate

Membership # 3114

SCBA Building, Ramna, Dhaka

Mobile: 01711-40339

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

SampleDISTRICT : DHAKA

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

MEMORANDUM OF APPEAL FROM ORIGINAL DECREE

F. A. T. NO. _____ OF 2019

F. A. NO. _____ OF 2019

IN THE MATTER OF :

1. Robiul Hossain, son of late Salamat Ali Khan, of House No. 29, Road No. 98, Gulshan – 2, Dhaka.
2. Pacific Motors Limited, a private limited company, having registration no. C-4456, of 206/1-207/1, Bir Uttam Mir Shawkat Sharak, Tejgaon, Dhaka-1208.

..... **Plaintiffs-Appellants.**

–Versus–

1. Bangladesh Bank, represented by its Governor, Head Office- Bangladesh Bank Bhaban, Motijheel C/A, Police Station- Motijheel, Dhaka-1000.
2. The General Manager, Credit Information Bureau, Bangladesh Bank, Head Office-Bangladesh Bank Bhaban, Police Station- Motijheel, Dhaka-1000.
3. Eastern Bank Limited, Head Office, of 100 Gulshan Avenue Gulshan, Dhaka - 1212, represented by its Managing Director.
4. Eastern Bank Limited, of Jiban Bima Bhaban, 2nd Floor, 10, Dilkusha C/A, Dhaka -1000, represented by its Manager.
5. Eastern Bank Limited, of Corporate Branch, of Uday Tower (Level 4 and 6), Plot Nos. 57 and 57A, Gulshan Avenue (South), Circle – 1 Dhaka – 1212, represented by its Manager.
6. National Bank Limited, Head Office, of 18, Dilkusha Commercial Area, Dhaka-1000, represented by its Managing Director.

7. National Bank Limited, of Corporate Branch, Banani Branch, House No. 71, Road-11, Block-D, Banani, Dhaka, represented by its Manager.
8. Phoenix Finance & Investments Limited, Head Office, of Eunoos Center (Level-11), 52-53 Dilkusha C/A, Dhaka-1000, represented by its Managing Director.
9. Brac Bank Limited, Head Office, of Anik Tower, 220/B Bir Uttam Mir Shawkat Sarak, Dhaka-1208, represented by its Managing Director.
10. Brac Bank Limited, of Corporate Office, Gulshan Avenue, Gulshan-1, Dhaka-1212, represented by its Manager.
11. International Finance Investment and Commerce Bank Limited (IFIC), Head Office, of BDBL Building (Previously known as BSB Building), 8th, 10th & 17th floors, 8 Rajuk Avenue, Dhaka, represented by its Managing Director.
12. International Finance Investment and Commerce Bank Limited (IFIC), of Corporate Office, Motijheel Branch, Islam Chamber, 125/A, Motijheel Commercial Area, Dhaka-1000, represented by its Manager.
13. Trust Bank Limited, Head Office, of Peoples Insurance Bhaban (2nd, 16th & 17th Floor), 36 Dilkusha C/A, Dhaka-1000, represented by its Managing Director.
14. Trust Bank Limited, of Corporate Office, Kawran Bazar Branch, EDB Trade Center, 93 Kazi Nazrul Islam Avenue, Dhaka-1215, represented by its Manager.
15. Mutual Trust Bank Limited, Head Office, of MTB Centre, 26 Gulshan Avenue, Plot 5, Block SE (D), Gulshan 1, Dhaka-1212, represented by its Managing Director.
16. Mutual Trust Bank Limited, of Corporate Office, House- 236, Road-2, Block-B, Bashundhara R/A, Dhaka- 1229, represented by its Manager.

.....Defendants-Respondents.

17. Pacific Bangladesh Telecom Limited, represented by its Managing Director, of Pacific Centre, 14, Mohakhali C/A, Dhaka – 1212.

.....Pro-forma Defendant-Respondent.

Appeal valued at Tk. 20,00,00,000/= (Twenty crore) only.

Suit valued at Tk. 20,00,00,000/= (Twenty crore) only.

Being aggrieved by and dissatisfied with the judgment and decree dated 10.07.2019, decree signed on 15.07.2019 passed by the learned Joint District Judge, 5th Court, Dhaka in Title Suit No. 298 of 2019 rejecting the plaint under Order VII Rule 11(d) of the Code of Civil Procedure-1908, the plaintiffs-appellants above named beg to file this Memorandum of Appeal on the following amongst other:-

G R O U N D S

- I. For that the impugned judgment and decree passed by the learned Joint District Judge, 5th Court, Dhaka is bad in law as well as in facts, hence the same is liable to be set aside.
- II. For that the learned Court below has passed the impugned judgment and decree without considering facts and circumstances of the case and hence the same is liable to be set aside.
- III. For that a civil suit is governed under three procedural laws namely, the Code of Civil Procedure- 1908, Civil Rules and Orders (of the Supreme Court of Bangladesh High Court Division, Dhaka, Volume-I) and Manual of Practical Instructions for the Conduct of Civil Cases. None of the said three laws empowered the learned court to reject the plaint in the very initial stage on maintainability ground. For that reason, the impugned judgment and decree suffers from serious illegality; and hence, the impugned judgment and decree is liable to be set aside.
- IV. For that Order XIV of the Code of Civil Procedure- 1908 provides that there may be two kinds of issues; i.e. issues on law and issues on facts. If the learned court below thought that the suit suffered from maintainability, he ought to have framed issues upon question of law for disposal of the suit. But without doing so, the learned court below rejected the plaint at the very initial stage. Moreover, if the learned Court below felt that there was no issues at all between the parties, he would have waited till filing of the written statement by the defendants as provided under Order XV of the Code of Civil Procedure, 1908 but without doing so the learned Court below has passed by the impugned judgment and decree by very arbitrary manner. Hence, the impugned judgment and decree is liable to be set aside.
- V. For that the trial court below committed an error of law rejecting the plaint on the ground of maintainability referring the cases being *BSRS Vs Rahman Textile Miles* reported in 51 DLR (AD) 221, *WB Industrial Corporation Vs Deen Mohammad* reported in 48 DLR (AD) 50 and *Burmah Eastern Ltd Vs Burmah Eastern Employees Union* reported in 18 DLR 709. But the ratios of those cases have no application to the present case; as such the impugned judgment and decree is liable to be set aside for ends of justice.
- VI. For that the trial court below failed to apply its judicial mind with regard to the issue that all the aforesaid three cited cases, their subject-matters, stages, deciding issues and perspectives were different. In all those cases, there were applications under Order VII Rule 11 of the Code of Civil Procedure, 1908 and some other laws from the defendant parties, but in the present suit the trial court at its own motion rejected the plaint under

Order VII Rule 11(d) of the Code of Civil Procedure, 1908 without examining that the court has no such suo moto jurisdiction under said provision of law. As such, the impugned judgment and decree is liable to be set aside for ends of justice.

- VII. For that the rejection of plaint under Order VII Rule 11 by the trial court below basing on the case *Bangladesh Shilpa Rin Sangstah vs Rahman Textile Mills Ltd and others*, 51 DLR (AD) 221 is misconceived and erroneous; because in that case, the plaint was rejected not under Order VII Rule 11 but it was not entertained according to article 34 (5) of the President Order No. 128 of 1972. There is a clear distinction between that case and the present case because, in the former to reject the plaint the statement in the plaint has to be looked into whereas in this case the relief claimed has to be taken into consideration for that purpose. That being so, the principle established in that case should not have been used to reject the plaint in the current case under Order VII Rule 11. As such, the impugned judgment and decree is liable to be set aside for ends of justice.
- VIII. For that the finding of the trial court below that the suit is barred by Article 41 (1) of Bangladesh Bank Order 1972 has not also been reached through application of its judicial mind because the intention of Article 41 (1) of the Order is to ensure that Bank or its officers are not being held personally responsible for any act done in good faith under Chapter IV of the Order. In the present case, the defendant Nos. 1 and 2 have been made parties not to hold them personally responsible but to restrain them from publishing and circulating the names of the plaintiffs-appellants in the CIB list. Therefore the barring provisions of Article 41 (1) has no manner of application here. As such, the impugned judgment and decree is liable to be set aside for ends of justice.
- IX. For that the reliance of the learned trial court on the case of *Burmah Eastern Ltd vs Burmah Eastern Employees Union and others*, 18 DLR 709 to reject the plaint is also a misconception and error of law. Because, in that very case the plaint was rejected being barred under law not being barred by the law. Because, in that case the party who filed Title Suit did not comply with the elements of section 42 of the Specific Relief Act. As such, the reasoning of the aforesaid case cannot be used to reject plaint in the present case because the elements of section 42 have fully been complied here by praying for declaration and consequential relief as required to make the said declaration effectual. Hence, the impugned judgment and decree is liable to be set aside for ends of justice.
- X. For that the learned trial court below very illegally, malafide and erroneously relied on the case *W B Industrial Corporation Ltd and Others vs Deen Mohammad Rana and nother* 48 DLR (AD) 50 for rejection of the plaint because that case has no manner relevance or application to the case instant. That case was dismissed and plaint was rejected on the ground of malafide. In the present case there is no such malafide. Hence, the impugned judgment and decree is liable to be set aside for ends of justice.
- XI. For that the phrase “rejection of plaint” is not defined in any law of our country. Rule 55(3) of the Civil Rules and Orders and Article 1 of the Manual of Practical Instructions of the Conduct of Civil Suits and Order VII Rule 11 of the Code of Civil Procedure- 1908 have provided the reasons for rejection of plaint. But none of the reason as stated in the said laws was present in the plaint which was filed by the plaintiffs-appellants. Hence, the impugned judgment and decree is liable to be set aside.

- XII. For that the learned Court below failed to consider that the statutory provisions of Banking Companies Act, 1991 and Bangladesh Bank Order, 1972 shall have to be applied considering facts and circumstances of the case. In the present case, the plaintiffs-appellants being had a good case for proving that their names should not be sent to the CIB for securing ends of justice. Hence, the impugned judgment and decree is liable to be set aside.
- XIII. For that the learned Court below failed to consider the suit did not suffer from any defect at all and it was barred neither by any express provisions of law nor by any necessary implication; and in that case, there is no scope of dismissing the suit summarily. Hence, the impugned judgment and decree is liable to be set aside.
- XIV. For that the learned court below hopelessly failed to consider that the suit was filed depositing proper court fee along with all other required documents; and there is no law in the Code of Civil Procedure or elsewhere for hearing of the suit regarding maintainability on merit of the suit. So, the decision of the learned Court below regarding hearing of the suit on maintainability is arbitrary, *malafide* and the same has been done out of misconception of law. Hence, the impugned judgment and decree is liable to be set aside.
- XV. For that the learned Court below failed to consider that the defendants have published names of the plaintiffs-appellants in the CIB list in violation of the policy of the government as well as Bangladesh Bank and the plaintiffs-appellants have right to prove their averments before the Court of civil jurisdiction by adducing evidence. But the learned trial Court failed to consider that aspect and passed the impugned judgment and decree without applying judicial mind. Hence, the impugned judgment and decree is liable to be set aside.
- XVI. For that the balance of convenience and inconvenience is clearly in favour of the plaintiffs-appellants and for that reason, an order of temporary injunction/stay should be passed regarding publication of the names of the plaintiffs-appellants in the CIB list for securing ends of justice.
- XVII. For that the impugned judgment and decree is neither proper nor in accordance with law.

CERTIFICATE

I do hereby certify that I have gone through the records of the case and the grounds set forth above are good grounds for First Appeal.

(Shahdat Hossain)

Advocate

Supreme Court of Bangladesh

List of papers:

1. This Memo of Appeal.
2. Vokatnama.
3. Impugned judgment and decree
4. 2nd Judge's copy.

SampleDISTRICT: DHAKA

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

CIVIL RULE NO. _____ OF 2019

F. A. T. NO. _____ OF 2019

F. A. NO. _____ OF 2019

IN THE MATTER OF:

An application for injunction.

AND**IN THE MATTER OF:**

Robiul Hossain and another.

.....Plaintiffs-Appellants.**—VERSUS—**

Bangladesh Bank and others

.....Defendants-Respondents.**AND****IN THE MATTER OF:**

1. Robiul Hossain, son of late Salamat Ali Khan, of House No. 29, Road No. 98, Gulshan – 2, Dhaka.
2. Pacific Motors Limited, a private limited company, having registration no. C-4456, of 206/1-207/1, Bir Uttam Mir Shawkat Sharak, Tejgaon, Dhaka-1208.

---- Plaintiffs- Appellants-Petitioners.**—VERSUS—**

1. Bangladesh Bank, represented by its Governor, Head Office- Bangladesh Bank Bhaban, Motijheel C/A, Police Station- Motijheel, Dhaka-1000.
2. The General Manager, Credit Information Bureau, Bangladesh Bank, Head Office-Bangladesh Bank Bhaban, Police Station- Motijheel, Dhaka-1000.
3. Eastern Bank Limited, Head Office, of 100 Gulshan Avenue Gulshan, Dhaka-1212, represented by its Managing Director.

4. Eastern Bank Limited, of Jiban Bima Bhaban, 2nd Floor, 10, Dilkusha C/A, Dhaka -1000, represented by its Manager.
5. Eastern Bank Limited, of Corporate Branch, of Uday Tower (Level 4 and 6), Plot Nos. 57 and 57A, Gulshan Avenue (South), Circle – 1 Dhaka – 1212, represented by its Manager.
6. National Bank Limited, Head Office, of 18, Dilkusha Commercial Area, Dhaka-1000, represented by its Managing Director.
7. National Bank Limited, of Corporate Branch, Banani Branch, House No. 71, Road-11, Block-D, Banani, Dhaka, represented by its Manager.
8. Phoenix Finance & Investments Limited, Head Office, of Eunoos Center (Level-11), 52-53 Dilkusha C/A, Dhaka-1000, represented by its Managing Director.
9. Brac Bank Limited, Head Office, of Anik Tower, 220/B Bir Uttam Mir Shawkat Sarak, Dhaka-1208, represented by its Managing Director.
10. Brac Bank Limited, of Corporate Office, Gulshan Avenue, Gulshan-1, Dhaka-1212, represented by its Manager.
11. International Finance Investment and Commerce Bank Limited (IFIC), Head Office, of BDBL Building (Previously known as BSB Building), 8th, 10th & 17th floors, 8 Rajuk Avenue, Dhaka, represented by its Managing Director.
12. International Finance Investment and Commerce Bank Limited (IFIC), of Corporate Office, Motijheel Branch, Islam Chamber, 125/A, Motijheel Commercial Area, Dhaka-1000, represented by its Manager.
13. Trust Bank Limited, Head Office, of Peoples Insurance Bhaban (2nd, 16th & 17th Floor), 36 Dilkusha C/A, Dhaka-1000, represented by its Managing Director.
14. Trust Bank Limited, of Corporate Office, Kawran Bazar Branch, EDB Trade Center, 93 Kazi Nazrul Islam Avenue, Dhaka-1215, represented by its Manager.

15. Mutual Trust Bank Limited, Head Office, of MTB Centre, 26 Gulshan Avenue, Plot 5, Block SE (D), Gulshan 1, Dhaka-1212, represented by its Managing Director.

16. Mutual Trust Bank Limited, of Corporate Office, House- 236, Road-2, Block-B, Bashundhara R/A, Dhaka- 1229, represented by its Manager.

..... **Defendants-Respondents-**

Opposite Parties.

17. Pacific Bangladesh Telecom Limited, represented by its Managing Director, of Pacific Centre, 14, Mohakhali C/A, Dhaka – 1212.

.....**Pro-forma Defendant-Respondent.**

Appeal valued at Tk. 20,00,00,000/= (Twenty crore) only.

Suit valued at Tk. 20,00,00,000/= (Twenty crore) only.

To

Mr. Justice Muhammad Imman Ali, the performing functions of the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioners most respectfully :—

S H E W E T H :

1. That the above noted First Appeal has been directed challenging propriety of the judgment and decree dated 10.07.2019, decree signed on 15.07.2019 passed by the learned Joint District Judge, 5th Court, Dhaka in Title Suit No. 298 of 2019 rejecting the plaint under Order VII Rule 11(d) of the Code of Civil Procedure-1908.
2. That the plaintiff-appellants-petitioners (*hereinafter referred to as the petitioners*) filed Title Suit No. 298 of 2019 before the learned Joint District Judge, 5th Court, Dhaka praying for—
 - (a) pass a decree declaring that the inclusion and publication of the names of the plaintiffs in the CIB report of Bangladesh Bank showing them as defaulters/guarantors in connection with all credit facilities advanced by the defendant Nos. 3-16 to the pro-forma defendant no. 17 is illegal, *malafide* and not binding upon the plaintiffs;
 - (b) award costs of the suit in favour of the plaintiffs;
 - (c) grant such other or further relief or reliefs which as to your honour may seem fit and proper under law and equity.

3. That the averments made by the plaintiffs-appellants-petitioners in the plaint are as follows:—
- A. That the plaintiff no. 1 is a Bangladeshi politician who served as the foreign minister of Bangladesh from 2001 to 2006. He was born in Chittagong. He studied engineering at the Tokyo University of Agriculture and Technology, and graduated with a Bachelor of Engineering. Following that, he received his postgraduate diploma from Sophia University, Japan. After his return to Bangladesh, he established several industries. He became active in politics first as the chairman to the Committee of Foreign Affairs and then as a special envoy of the Prime Minister of Bangladesh, during the Bangladesh Nationalist Party led government between 1991 and 1996. He has served several terms in the Jatiyo Sangshad, the national parliament of Bangladesh. He served as the Foreign Minister in the Cabinet from October 2001 until a caretaker government took office to prepare for new elections in October 2006. He is a prospective candidate for upcoming 11th Parliamentary Election. The plaintiff no. 2 is a private limited company registered under the laws of Bangladesh. The plaintiff no. 1 holds just 100 shares in the plaintiff no. 2 company which is less than 1% of total shares of the plaintiff no. 2 company. The plaintiff no. 1 is neither a director of the plaintiff no. 2 company nor he holds more than 20% shares; as such the plaintiff no. 1 cannot be treated as an ‘interest concern’ of the plaintiff no. 2 company.
- B. That the defendant No.1 is the Bangladesh Bank, the defendant No.2 is the General Manager, Credit Information Bureau (CIB), Bangladesh Bank, the defendant No.3 is the Eastern Bank Limited, Head Office, of 100 Gulshan Avenue Gulshan, Dhaka - 1212, represented by its Managing Director. The other defendant nos. 4-16 are the banks and financial institutions from who the pro-forma defendant no. 17 obtained loans. The addresses of the plaintiffs and defendants given in the cause title are true and correct for the purpose of service of notices, petitions, etc.
- C. That the pro-forma defendant no. 17 company obtained loans from the defendant Nos. 3-15 banks on different dates. All these loans were obtained by the pro-forma defendant no. 17 during its course of business and re-scheduled/re-arranged time to time. Some of the loans have already been fallen due, and some are not. The plaintiffs are no way connected with those loans when re-scheduled, and the plaintiffs, in person, have no defaulting issues with any other bank or financial institutions. The plaintiffs neither are the personal borrowers nor are they the mortgagors and personal guarantors against those loans. However, the plaintiff no. 2 provided corporate guarantee against the said loan which does not extend to all the directors and shareholders of the plaintiff no. 2. The plaintiff no. 1 is a nominal shareholder of the plaintiff no. 2 holding less than 1% shares. The names of the plaintiffs have been inserted as corporate guarantors in respect of loan as obtained by the pro-forma defendant no. 17 from the defendant no. 16, but no corporate guarantees by the plaintiffs have been executed yet.

- D. That the plaintiffs are neither the borrowers nor the beneficiaries of the said loans obtained by the pro-forma defendant no. 17. The loan was obtained by the pro-forma defendant no. 17 for its business purpose. However, challenging the publication of the name of the pro-forma defendant no. 17 in the CIB Report of Bangladesh Bank in connection with the said loan obtained by the pro-forma defendant no. 17, the pro-forma defendant no. 17 filed a writ petition being no. 12211 of 2014 and obtained Rule and stay vides order dated 15.12.2014 for a period of six months, which has been extended subsequently till disposal of the writ petition. The writ petition is still pending before the Hon'ble High Court Division and the said order of Rule and Stay is in force. As such, the name of the pro-forma defendant no.17 is not showing up in the CIB Report in Bangladesh Bank.
- E. That it is stated that since the publication of the name of the pro-forma defendant no. 17 as a principal borrower in the CIB Report of Bangladesh Bank has been stayed by the Hon'ble High Court Division in the said writ petition, therefore the plaintiff no. 2 being merely the corporate guarantee provider should not be shown/published in the CIB Report of Bangladesh Bank. But the defendant nos. 1-16 are very illegally, malafide and arbitrarily are showing and publishing the names of the plaintiffs in the CIB Report of Bangladesh.
- F. That it is stated that the plaintiff no. 1 holds just 100 shares in the plaintiff no. 2 company which is less than 1% of total shares of the plaintiff no. 2 company. The plaintiff no. 1 is neither a director of the plaintiff no. 2 company nor he holds more than 20% shares; as such the plaintiff no. 1 cannot be treated as an 'interest concern' of the plaintiff no. 2 company.
- G. That by dint of the aforesaid position the plaintiff no. 1 is neither a borrower nor a mortgagor or a guarantor against the said loans obtained by the pro-forma defendant no. 17 from the defendant nos. 3-16; as such the plaintiff should not come under the purview of Section 5GaGa read with Section 27KaKa of the Bank Company Act, 1991. Therefore, his name should not be published in the CIB Report of Bangladesh Bank.
- H. That due to the impugned publication of the names of the plaintiffs in the CIB Report of Bangladesh Bank, the plaintiffs are suffering huge loss and damage in respect of their other business and affairs. The impugned CIB publication is especially creating obstruction for the plaintiff no. 1 in the way of participating in the upcoming parliamentary election due to his no fault. As such, the impugned publication of the names of the plaintiff no. 1 in the CIB Report should liable to be declared illegal, arbitrary, malafide and not binding upon all.
- I. That it is stated that the provision of publishing the names of the defaulters in the CIB report of Bangladesh Bank as provided under Article 42-48 of the Bangladesh Bank Order, 1972 and Section 5GaGa of the Bangladesh Bank Order, 1991 are absolutely unconstitutional, ultra vires and violative to the fundamental rights as guaranteed under Article 31, 32, 40 and 42 of the Constitution of the People's Republic of Bangladesh.

- J. That it is stated that in case of any defaulting issue, the bank or financial institution has several legal recourses including filling suit under Artha Rin Adalat Ain, 2003, Negotiable Instruments Act, 1881, selling out mortgage properties, filling other civil and criminal cases, blocking the account, imposing interest, preventing them from doing any business or becoming members in any body corporate or institute, etc. Under the circumstances, publication of the name of the borrower in the CIB report of Bangladesh Bank is more than imposing double punishment upon the borrower, because the adverse effects of publication of the name the borrower in the CIB Report are far reaching and prevent the person from doing any business and also being member or promoter in any institution, which is violative to the fundamental rights as guaranteed under Article 31, 32, 40 and 42 of the Constitution of the People's Republic of Bangladesh.
- K. That it is stated that before publication of the names of the borrowers investors in the CIB Report no opportunity of being heard or show-cause notice to the borrowers investors.
- L. That it is stated that under the aforesaid circumstances, since adequate securities including mortgage of valuable immoveable properties, performance guarantees, and personal guarantees have been given against these loans; therefore, staying the impugned publication of the names of the plaintiffs in the CIB Report will not create any problem for the defendants to recover of this said loan against the plaintiffs.
- M. That it is stated that the plaintiff Nos. 1-2 are neither the personal borrower nor the beneficiary of the said loans. But, due to impugned publication of the names of the plaintiffs in the CIB Report of the Bangladesh Bank, the plaintiffs are suffering irreparable loss and injury which may not be compensated in terms of money. Moreover, staying of the impugned publication of the names of the plaintiffs in the CIB Report shall not create any bar/hindrance to recover money or initiate any legal proceeding against the borrower.

Certified copy of the plaint of Title Suit No. 298 of 2019 is annexed hereto and marked as **ANNEXURE- "A"**.

- 4. That thereafter, the plaintiffs-petitioners filed an application for injunction in the said suit. Certified copy of the said application for injunction is annexed hereto and marked as **ANNEXURE- "B"**.
- 5. That the petitioners submitted photocopies of all necessary papers and documents before the learned Court below in support of his case. Photocopies of the said documents are annexed hereto and marked as **ANNEXURE- "C" Series**.
- 6. That it is stated that the plaint was registered as Title Suit No. 298 of 2019 vide order dated 30.05.2019 and next date of the suit was fixed on 10.07.2019 for the purpose of hearing of the suit on maintainability and also for hearing of the application for temporary injunction; and on 10.07.2019, the plaint was rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 on maintainability ground vide judgment and decree dated 10.07.2019 and decree was signed on 15.07.2019.

7. That it is submitted that the impugned judgment and decree passed by the learned Joint District Judge, 5th Court, Dhaka is bad in law as well as in facts, hence the respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report.
8. That it is submitted that a civil suit is governed under three procedural laws namely, the Code of Civil Procedure- 1908, Civil Rules and Orders (of the Supreme Court of Bangladesh High Court Division, Dhaka, Volume-I) and Manual of Practical Instructions for the Conduct of Civil Cases. None of the said three laws empowered the learned court to reject the plaint in the very initial stage on maintainability ground. For that reason, the impugned judgment and decree suffers from serious illegality. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
9. That it is submitted that Order XIV of the Code of Civil Procedure- 1908 provides that there may be two kinds of issues; i.e. issues on law and issues on facts. If the learned court below thought that the suit suffered from maintainability, he ought to have framed issues upon question of law for disposal of the suit. But without doing so, the learned court below rejected the plaint at the very initial stage. Moreover, if the learned Court below felt that there was no issues at all between the parties, he would have waited till filing of the written statement by the defendants as provided under Order XV of the Code of Civil Procedure, 1908 but without doing so the learned Court below has passed by the impugned judgment and decree by very arbitrary manner. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
10. That it is submitted that the trial court below committed an error of law rejecting the plaint on the ground of maintainability referring the cases being *BSRS Vs Rahman Textile Miles* reported in 51 DLR (AD) 221, *WB Industrial Corporation Vs Deen Mohammad* reported in 48 DLR (AD) 50 and *Burmah Eastern Ltd Vs Burmah Eastern Employees Union* reported in 18 DLR 709. But the ratios of those cases have no application to the present case; as such the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
11. That it is submitted that the trial court below failed to apply its judicial mind with regard to the issue that all the aforesaid three cited cases, their subject-matters, stages, deciding issues and perspectives were different. In all those cases, there were applications under Order VII Rule 11 of the Code of Civil Procedure, 1908 and some other laws from the defendant parties, but in the present suit the trial court at its own motion rejected the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 without examining that the court has no such suo moto jurisdiction under said provision of law. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
12. That it is submitted that the rejection of plaint under Order VII Rule 11 by the trial court below basing on the case *Bangladesh Shilpa Rin Sangstah vs Rahman Textile Mills Ltd and others*, 51 DLR (AD) 221 is misconceived and erroneous; because in that case, the plaint

was rejected not under Order VII Rule 11 but it was not entertained according to article 34 (5) of the President Order No. 128 of 1972. There is a clear distinction between that case and the present case because, in the former to reject the plaint the statement in the plaint has to be looked into whereas in this case the relief claimed has to be taken into consideration for that purpose. That being so, the principle established in that case should not have been used to reject the plaint in the current case under Order VII Rule 11. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.

13. That it is submitted that the finding of the trial court below that the suit is barred by Article 41 (1) of Bangladesh Bank Order 1972 has not also been reached through application of its judicial mind because the intention of Article 41 (1) of the Order is to ensure that Bank or its officers are not being held personally responsible for any act done in good faith under Chapter IV of the Order. In the present case, the defendant Nos. 1 and 2 have been made parties not to hold them personally responsible but to restrain them from publishing and circulating the names of the plaintiffs-appellants in the CIB list. Therefore the barring provisions of Article 41 (1) has no manner of application here. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
14. That it is submitted that the reliance of the learned trial court on the case of *Burmah Eastern Ltd vs Burmah Eastern Employees Union and others*, 18 DLR 709 to reject the plaint is also a misconception and error of law. Because, in that very case the plaint was rejected being barred under law not being barred by the law. Because, in that case the party who filed Title Suit did not comply with the elements of section 42 of the Specific Relief Act. As such, the reasoning of the aforesaid case cannot be used to reject plaint in the present case because the elements of section 42 have fully been complied here by praying for declaration and consequential relief as required to make the said declaration effectual. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
15. That it is submitted that the learned trial court below very illegally, malafide and erroneously relied on the case *W B Industrial Corporation Ltd and Others vs Deen Mohammad Rana and others* 48 DLR (AD) 50 for rejection of the plaint because that case has no manner relevance or application to the case instant. That case was dismissed and plaint was rejected on the ground of malafide. In the present case there is no such malafide. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
16. That it is submitted that the phrase “rejection of plaint” is not defined in any law of our country. Rule 55(3) of the Civil Rules and Orders and Article 1 of the Manual of Practical Instructions of the Conduct of Civil Suits and Order VII Rule 11 of the Code of Civil Procedure- 1908 have provided the reasons for rejection of plaint. But none of the reason as stated in the said laws was present in the plaint which was filed by the plaintiffs-appellants.

Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.

17. That it is submitted that the learned Court below failed to consider that the statutory provisions of Banking Companies Act, 1991 and Bangladesh Bank Order, 1972 shall have to be applied considering facts and circumstances of the case. In the present case, the plaintiffs-appellants being had a good case for proving that their names should not be sent to the CIB for securing ends of justice. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
18. That it is submitted that the learned Court below failed to consider the suit did not suffer from any defect at all and it was barred neither by any express provisions of law nor by any necessary implication; and in that case, there is no scope of dismissing the suit summarily. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
19. That it is submitted that the learned court below hopelessly failed to consider that the suit was filed depositing proper court fee along with all other required documents; and there is no law in the Code of Civil Procedure or elsewhere for hearing of the suit regarding maintainability on merit of the suit. So, the decision of the learned Court below regarding hearing of the suit on maintainability is arbitrary, *malafide* and the same has been done out of misconception of law. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
20. That it is submitted that the learned Court below failed to consider that the defendants have published names of the plaintiffs-appellants in the CIB list in violation of the policy of the government as well as Bangladesh Bank and the plaintiffs-appellants have right to prove their averments before the Court of civil jurisdiction by adducing evidence. But the learned trial Court failed to consider that aspect and passed the impugned judgment and decree without applying judicial mind. Hence, the defendants-respondents-opposite parties should be restrained by an order of injunction from publishing names of the plaintiffs-petitioners in the CIB report for ends of justice.
21. That it is submitted that the balance of convenience and inconvenience is clearly in favour of the plaintiffs-appellants and for that reason, an order of temporary injunction/stay should be passed regarding publication of the names of the plaintiffs-appellants in the CIB list for securing ends of justice.
22. That it is submitted that the *prima facie* case absolutely goes in favor of the plaintiffs-petitioners on the ground that the plaintiff no. 1 holds just 100 shares in the plaintiff no. 2 company which is less than 1% of total shares of the plaintiff no. 2 company. The plaintiff no. 1 is neither a director of the plaintiff no. 2 company nor he holds more than 20% shares; as such the plaintiff no. 1 cannot be treated as an 'interest concern' of the plaintiff no. 2

company. Hence, the opposite parties may kindly be restrained from publishing the names of the plaintiffs in the CIB Report showing them as defaulters/guarantors by an order of ad-interim injunction for ends of justice.

23. That it is submitted that the plaintiffs-petitioners are neither the borrowers nor the beneficiaries of the said loans obtained by the pro-forma defendant no. 17. The loan was obtained by the pro-forma defendant no. 17 for its business purpose. However, since the publication of the name of the pro-forma defendant no. 17 as a principal borrower in the CIB Report of Bangladesh Bank has been stayed by the Hon'ble High Court Division in the said writ petition, therefore the plaintiff no. 2 being merely the corporate guarantee provider should not be shown/published in the CIB Report of Bangladesh Bank. But the defendant nos. 1-16 are very illegally, malafide and arbitrarily are showing and publishing the names of the plaintiffs in the CIB Report of Bangladesh. Hence, the opposite parties may kindly be restrained from publishing the names of the plaintiffs in the CIB Report showing them as defaulters/guarantors by an order of ad-interim injunction for ends of justice.
24. That it is submitted that by dint of the aforesaid position the plaintiff no. 1 is neither a borrower nor a mortgagor or a guarantor against the said loans obtained by the pro-forma defendant no. 6 from the defendant nos. 3-16; as such the plaintiff should not come under the purview of Section 5GaGa read with Section 27KaKa of the Bank Company Act, 1991. Therefore, their names should not be published in the CIB Report of Bangladesh Bank. Hence, the opposite parties may kindly be restrained from publishing the names of the plaintiffs in the CIB Report showing them as defaulters/guarantors by an order of ad-interim injunction for ends of justice.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue a Rule calling upon the defendants-respondents-opposite parties to show cause as to why they should not be restrained by an order of injunction from reporting, sending and publishing the names of the plaintiffs-petitioners in the CIB Report of Bangladesh Bank showing them as defaulters/guarantors in connection with all credit facilities advanced by the defendant-opposite party Nos. 3-16 to the pro-forma defendant-opposite party No. 17; and after hearing the parties and perusing the cause shown, if any, make the Rule absolute; and/or pass such other or further order or orders as your Lordships may seem fit and proper.

AND

Pending hearing of the Rule, be further pleased to pass an *ad-interim* order of injunction restraining the defendants-respondents-opposite parties from reporting, sending and publishing the names of the plaintiffs-petitioners in the CIB Report of Bangladesh Bank

showing them as defaulters/guarantors in connection with all credit facilities advanced by the defendant-opposite party Nos. 3-16 to the pro-forma defendant-opposite party No. 17 till disposal of the instant First Appeal for ends of justice.

And for this act of kindness, the plaintiffs-appellants-petitioners as in duty bound, shall ever pray.

A F F I D A V I T

I, Manzur Morshed Khan, son of late Salamat Ali Khan and late Laila Begum, of House No. 9, Road No. 68, Post Office- Gulshan Model Town-1212, Gulshan, Dhaka City Corporation, Dhaka, Date of Birth- 08 August 1940, by faith- Muslim, by profession- Business, by Nationality- Bangladeshi, National ID No. 19402692619000007 do hereby solemnly affirm and say as follows:—

01. That I am the plaintiff-appellant-petitioner No.1 in this case and as such I am acquainted with the facts and circumstances of this case and competent to swear this Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shahadat Hossain)

Advocate

Membership # 6731

Hall Room No. 2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

AFFIDAVIT

I, Abu Shahan Md. Monir, Company Secretary of Pacific Motors Limited, a private limited company, having registration no. C-4456, of 206/1-207/1, Bir Uttam Mir Shawkat Sharak, Tejgaon, Dhaka, Date of Birth-, age about-, by faith- Muslim, by profession- Business, by Nationality-Bangladeshi, National ID No. do hereby solemnly affirm and say as follows:-

01. That I am the plaintiff-appellant-petitioner No. 2 in this case and as such I am acquainted with the facts and circumstances of this case and competent to swear this Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shahadat Hossain)

Advocate

Membership # 6731

Hall Room No.2, Supreme

Court Bar Association Building

Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

CHAPTER 11

Civil Revision

Against any non-appealable judgment and order, civil revision lies under Section 115 of the Code of Civil Procedure. It can be filed either before the High Court Division or the District Judge depending on the suit value and jurisdiction of the court. Only law points involving any error of law resulting in an error in the impugned decree or order occasioning failure of justice is considered in civil revision. It lies against decree or order. Any decree passed by the court having original jurisdiction is appealable as mentioned under Order XLI of the Code unless otherwise exception provided under law. On the other hand, any decree passed by the court in appellate jurisdiction can be subject to revision unless otherwise exception provided under law. Revision can lie against any order other than as mentioned under Order XLIII of the Code. Revision application is to be filed in prescribed format. Against revision application, the opposite party can file affidavit-in-opposition. Section 115 reads out as follows—

- “Section 115 : Revision** – The High Court Division may, on the application of any party aggrieved, call for the record of any suit or proceedings, in which a decree or an order has been passed by a Court of District Judge or Additional District Judge, or a decree has been passed by a Court of Joint District Judge, Senior Assistant Judge or Assistant Judge, from which no appeal lies; and if such Court appears to have committed any error of law resulting in an error in such decree or order occasioning failure of justice, the High Court Division may, revise such decree or order and, make such order in the suit or proceedings, as it thinks fit.
- (2) The Court of District Judge may, on the application of any party aggrieved, call for the record of any suit or proceeding, in which an order has been passed by a Court of Joint District Judge, Senior Assistant Judge or Assistant Judge, from which no appeals lies; and if such Court appears to have committed any error of law resulting in an error in such order occasioning failure of justice, the Court of District Judge may, revise such order and, make such order as it thinks fit.
 - (3) A Court of Additional District Judge shall have all the powers of the District Judge under sub-section (2) in respect of revision case which may be transferred to it by the District Judge.
 - (4) An application to the High Court Division for revision of an order of the District Judge or, Additional District Judge, as the case may be, made under sub-section (2) or (3) shall lie, where the High Court Division grants leave for revision on an (4) An application to the High Court Division for revision of an order of the District Judge or, Additional District Judge, as the case may be, made under sub-section (2) or (3) shall lie, where the High Court Division grants leave for revision on an error of an important question of law resulting in erroneous decision occasioning failure of justice, and the High Court Division may make such order in the suit or proceeding as it thinks fit.
 - (5) Notwithstanding the substitution of this section, any proceeding commenced and pending under section 115 prior to such substitution shall be disposed of in such manner as if section 115 has not been substituted.”

SampleDISTRICT : DHAKA

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

CIVIL REVISION NO. _____ OF 2018.

IN THE MATTER OF :

An application under Section 115(1) of the Code of Civil Procedure, 1908.

(Against judgment and decree)

AND**IN THE MATTER OF :**

Eastern Housing Ltd, of Head Office 125/A, Motijheel Commercial Area, Police Station-Motijheel, District-Dhaka

..... **Plaintiff-Appellant-
Petitioner.**

–VERSUS–

1. Niyamat Ali Dewan, son of late Modhu Dewan (now dead)
2. Ramisa Khatun, wife of late Niyamat Ali Dewan (now dead)

The defendant Nos. 1 and 2 being died represented by their heirs—

- 2(a). Md. Hashem
- 2(b). Md. Hosen
- 2(c). Md. Abdul Kader
- 2(d). Most. Ayesah
- 2(e). Most. Aziron
- 2(f). Most. Sufia

All sons and daughters of late Niyamat Ali Dewan and late Ramisa Khatun, of Norsinghopur, Police Station-Savar, District- Dhaka.

..... **Defendants-Respondents
Opposite Parties.**

AND

IN THE MATTER OF

Impugned judgment and decree dated 26.11.2017, decree signed on 03.01.2018, passed by the learned Additional District Judge, 1st Court, Dhaka in Title Appeal No. 149 of 2016 disallowing the appeal and thereby affirming the judgment and decree dated 31.01.2016, decree signed on 07.02.2016 passed by the learned Senior Assistant Judge, Savar Court, Dhaka in Title Suit No. 112 of 2002 dismissing the suit.

APPLICATION VALUED AT TK. 1,000/- ONLY

APPEAL VALUED AT TK. 1,000/- ONLY

SUIT VALUED AT TK. 1,000/- ONLY

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the plaintiff-appellant-petitioner above named most respectfully:—

S H E W E T H :

1. That this revision application has been directed against judgment and decree dated 26.11.2017, decree signed on 03.01.2018, passed by the learned Additional District Judge, 1st Court, Dhaka in Title Appeal No. 149 of 2016 disallowing the appeal and thereby affirming the judgment and decree dated 31.01.2016, decree signed on 07.02.2016 passed by the learned Senior Assistant Judge, Savar Court, Dhaka in Title Suit No. 112 of 2002 dismissing the suit.
2. That the plaintiff-appellant-petitioner (*herein after referred to as "the petitioner"*) filed Title Suit No. 112 of 2002 before the Court of learned Senior Assistant Judge, Savar Court, Dhaka praying for permanent injunction against the defendants-respondents-opposite parties (*herein after referred to as "the opposite parties"*) restraining them from forcefully entering into the suit land and hampering the peaceful possession of the petitioner in the said land stating *inter-alia* that disputed land measuring 0.72 acres under Plot No. 130 appertaining to C. S. Khatian 152 and S. A. Khatian No. 244, is situated in Diyakhai Mouza of Upazilla-Savar, District- Dhaka and surrounded by Union Parisad Road on North, by Gias Uddin Molla on South, by Eastern Housing Ltd on West and by Gias Uddin Molla and Safaz Uddin Ahmed on East. The aforesaid disputed land of 0.72 along with the rest of 6.03 acres under 7 plots appertaining to the same C. S. Khatian 152 originally belonged to five brothers namely- Nobo Deep Sardar, Goya Nath Sardar, Noni Mohan Sardar, Ghir Lal Sardar and Makhon Lal Sardar. While Nobo Deep gong was in enjoyment and possession of the aforesaid land, Noni Mohan Sardar and Ghir Lal Sardar died unmarried leaving behind three brothers as their heirs. Thereafter Nobo Deep Sardar died leaving his four sons –Ram Chandra Sarker, Shri Charan Sarker, Roy Charan Sakrker and Sham Charan Sarker

alive. And Goya Nath Sardar died leaving behind his wife, Romoni Beoya. Consequently the names of Nobo Deep Sardar's four sons along with his brother-Makhon Lal Sardar and brother's wife, Romoni Beoya were recorded in S. A. Khatian. Thereafter, Romoni Beoya and Makhon Lal Sardar died and accordingly Ram Chandra Sarker, Shri Charan Sarker, Roy Charan Sarker and Sham Charan Sarker became the owner of 6.03 acres in 7 plots including the suit land of 0.72 acre. On 15.12.1963 under an agreement for sale, the owners of land measuring 6.03 acres agreed to sell the same for the price of TK. 24,300 to the then Chairman of the petitioner, Zahurul Islam. On the same day, they received amount of 21,000 from the Chairman of the petitioner and placed him in the possession of the said land. Thereafter, the owners refused to receive the remaining amount of TK. 3,300 and to execute a saf kabala deed in the name of the petitioner in respect of the said land. In that situation, according to the rules of Disturbed Person's Rehabilitation Ordinance a Permission Suit being No 2404/67 was filed to the Board of Revenue against the owners who executed the agreement for sale. The Board of Revenue found the agreement for sale (baina patra) proper and gave permission to sell the disputed land. Accordingly, the petitioner's benamdar Zahirul Islam filed a suit being number 136/67 for specific performance of contract against the owners in the learned Court of Sub-Judge, 2nd Court Dhaka. The suit was then transferred to the learned Sub-Judge Court, 5 Dhaka and was renumbered as 120/68. Thereafter, on 17.07.68, the owners of the land who executed the agreement for sale appeared before the learned Sub-judge Court 5, Dhaka and submitted a compromise agreement promising that they would accept the remaining amount of TK.3300 and execute saf kabala deed within 15 days and accordingly the learned court passed a compromise decree on the same day. But unfortunately, the owners who executed the agreement for sale did not execute saf kabala deed and consequently benamdar Zahirul Islam filed a suit for enforcement of decree being No. 29/68 and on 07.02.69 the court got the saf kabala executed and registered in the name of Zahirul Islam by saf kabala deed being No. 1655. Subsequently, the petitioner through its director, Mir Mohammed Yeasin filed a Civil Suit being No. 109/73 against the said Zahirul Islam in the Sub-Judge Court 2, Dhaka and obtained *ex parte* decree on 13.11.73. Thereafter, the petitioner mutated the total land of 6.03 acres including the suit land of 0.72 acre in its name and has been peacefully enjoying the same being in possession through its caretaker and leaseholders. But the opposite parties at around 4 pm on 11.12.2000 came and threatened the petitioner's guard and other people who were in charge and tried to forcefully dispossess them but on the face of strong opposition from the people present there they were bound to leave the spot. They came the following day as well at around 8am with the same intention failing which they threatened that they would come back and forcefully dispossess and build up houses there. On the same day, the high official of the petitioner lodged a G. D. with Savar Police Station being No. 1220 dated 12.12.2000 and prayed for taking necessary steps by issuing notice under Section 154 of the Penal Code, 1860. Finding the truth of the contents of the G. D. and prayer under section 154, the Assistant Sub Inspector, Azizur Rahman of Savar Police Station, issued a notice on the opposite parties on the same day. Having received the notice, the opposite parties remained silent for nearly one and half year. But on 18.04.2002, the opposite parties along with miscreants and hooligans numbering 20/25 again came in order to forcefully dispossess the petitioner. Hence is the suit.

3. That the opposite parties contested the aforesaid suit by filing written statement denying all material averments of the plaint and stating *inter-alia* that one Golok Chandra Sardar received the land of 6.03 acres in 7 plots of C. S. Khatian 152 from the then zamindar by way of settlement. While Golok Chandra Sardar was in possession of the aforesaid land, he died leaving behind five sons- Nobo Deep Sardar, Goya Nath Sardar, Noni Mohan Sardar, Ghir Lal Sardar and Makhon Lal Sardar. It was then recorded in their names in C. S. Khatian No. 152. When Nobo Deep Sardar failed to pay the rents to the zamindar in respect of the aforesaid land, the latter obtained a decree from the court in a Money suit. Following a suit for enforcement of the said decree, one Romoni Mohan Ghosh purchased the whole of 6.03 acres appertaining to C. S. Khatian No. 152 in an auction sale along with 0.52 acre under plot No. 1311 appertaining to C. S. Khatian No. 153 of the same Mouza. Subsequently Romoni Mohan Ghosh, keeping 0.18 acre from 0.72 acre under plot 130 for his own use, by a registered saf-kabala deed being No. 2067 dated 10.04.51, sold 0.15 acre from Plot No. 127, 0.48 acre from Plot No. 128, 0.98 acre from Plot No. 129 and 0.27.5 acre from plot 130 along with other lands to Goya Nath Sardar and Makhon Chandra Sardar and placed them in the possession of the said land. Then Romoni Mohan Ghosh sold the remaining portion of the land from the aforesaid plots by a deed being No. 2861 dated 27.06.51 to four sons of Nobo Deep Sardar namely- Ram Chandra Sarker, Shri Charan Sarker, Roy Charan Sarker and Sham alia Nidhon Charan Sarker and placed them in the possession of the said land. Thereafter, Makhon Chandra Sarker died issueless leaving four brother's sons as his heirs and Goya Nath Sardar died leaving his wife Romoni Beoya (for life interest) The property was thereafter recorded in S. A. Khatian No. 244 in the names of Ram Charan Sarker, Roy Charan Sarker, Shri Charan Sarker, Sham Charan Sarker, Moroni Beoya and Romoni Mohan Ghosh. When S.A. Khatian was published it was found that the names of three brothers and Moroni Beoya were in the S. A. record but the name of Ram Charan Sarker was not so available. Though the name of Ram Charan was not in S. A. record, the names of four brothers were correctly recorded in R. S. Khatian No. 576. While the four brothers were in possession, Roy Charan, Shri Charan and Sham Charan by a deed being No. 9157 dated 16.09.69 sold 0.21 acres of land of the disputed property along with other land to the defendant-respondent-opposite party No.1 (now dead) and then Roy Charan and Sham Charan Sarker by a deed being No. 9158 dated 16.09.69 sold 0.33 acres land of the disputed property to the opposite party No. 2 (now dead). Then the opposite parties Nos. 1 and 2 got their names mutated in the said purchased property and have been enjoying the same since 1970 by cultivating rice, jutes and other daily essentials. In 1992 Ram Charan Sardar, by a deed being No. 6808 dated 14.07.92 sold his portion measuring 0.1225 acre of the disputed land in his possession to the opposite party No. 2 and placed her in the possession of the same. On the other hand, Romoni Mohan Ghosh, owner of 0.18 acres in the disputed land died leaving two sons namely Haripad Ghosh and Rashik Lal Ghosh. Subsequently Rashik Lal Ghosh died leaving behind his heir Bipun Kumar Ghosh. So Haripad Ghosh and Bipun Kumar Ghosh became the owner of 0.18 acres of land and sold the same by a deed being No. 10100 dated 20.12.78 to one Shamsuddin and placed him in the possession of the same. Thereafter, the opposite party Nos. 1 and 2 died leaving as heirs their 3 (three) sons and 3 (three) daughters who are now the opposite parties from 2

(a) to 2 (f). This is how the opposite parties from 2(a) to 2(f) became the owner of 0.6625 acre of the disputed property and have been enjoying the same by making ten shops alongside the northern boundary of the property and letting all those shops. The opposite parties alleged that in the disputed property the petitioner had no right, interest and possession and hence they challenged the title suit for discharge of the same with cost.

4. That during trial, the petitioner examined as many as 4 (four) witnesses and the opposite parties examined 5 (five) witnesses in their favour. Besides, the documents produced by the plaintiff were marked as Exhibit Nos. 1-7 series; and the documents produced by the defendants were marked as Exhibit- Ka-Cha respectively. In addition, the Record Room Deputy Collector in the charge of record of the District Commissioner's Office, Dhaka was also examined as C.W. 1.
5. That after conclusion of the trial, the learned Senior Assistant Judge, Savar Court, Dhaka was pleased to dismiss the suit by his judgment and decree dated 31.01.2016 and the decree was signed on 07.02.2016.
6. That being aggrieved by and dissatisfied with the aforesaid judgment and decree, the petitioner preferred Title Appeal No. 149/2016 before the Court of learned District Judge, Dhaka.
7. That the said appeal was transferred to the Court of learned Additional District Judge, ^{1st} Court Dhaka for its disposal and after hearing both the parties, the learned appellate Court was pleased to affirm the judgment and decree of the Senior Assistant Judge Court vide judgment and decree dated 26.11.17 and the decree was signed on 01.03.2018.
8. That it is submitted that the both the learned courts below committed error of law resulting in an error in the decision occasioning failure of Justice in passing the impugned judgments and decrees, and as such the same are liable to be set aside.
9. That it is submitted that both the learned courts below committed an error of law resulting in an error in decision occasioning failure of justice in passing the impugned judgments and decrees without appreciating the facts, circumstances and evidences on record, and as such the impugned judgments and decrees are bad in law and liable to be set aside.
10. That it is submitted that the learned courts below committed an error of law resulting in an error in the decision occasioning failure of justice in not believing that there was an agreement for sale executed between the petitioner and the owners of 6.03 acres of land; there was permission case being No. 2404/47 in respect of the same agreement; there was suit for specific performance of contract being No. 102/68 following failure of the owners of the land to act in accordance with the said agreement; there was a compromise decree by the court in the said suit and there was a suit for enforcement of the said decree being No. 29/68 resulting in the registration of the said land in the name of Zahirul Islam, the then Chairman of the petitioner by a deed being No. 1655. The petitioner substantiated the aforesaid matters by providing evidences. Nevertheless the learned courts below erroneously arrived at a conclusion that the deed being 1655 was false and fabricated. Hence, the impugned judgment and order is bad in law and liable to be set aside.
11. That it is submitted that the learned courts below committed an error of law resulting in an error in the decision occasioning failure of justice in not appreciating that when a suit land of 0.72 under plot No 130 appertaining to C. S. Khatian No. 152 was already registered in

the name of said Zahirul Islam, subsequent two sales dated 16.09.69 transferring 0.21 and 0.33 acres of land from the same plot by the owners, if took place at all, under no circumstance could be a valid transfer. Hence the judgment and order is liable to be set aside.

12. That it is submitted that the learned courts below committed an error of law resulting in an error in the decision occasioning failure of justice in not considering that the land of 6.03 acres including the suit land of 0.72 acre passed from late Zahurul Islam to the petitioner following a suit and then the same was mutated in the name of the petitioner establishing prima facie title in their favour. Hence, the judgment and order is bad in law and liable to be set aside.
13. That being aggrieved by and dissatisfied with the judgment and decree dated 26.11.2017, decree signed on 03.01.2018, passed by the learned Additional District Judge, 1st Court, Dhaka in Title Appeal No. 149 of 2016 disallowing the appeal and thereby affirming the judgment and decree dated 31.01.2016, decree signed on 07.02.2016 passed by the learned Senior Assistant Judge, Savar Court, Dhaka in Title Suit No. 112 of 2002 dismissing the suit, the petitioner begs to file this revision application before your Lordships on the following amongst other—

GROUND S

- I. For that the both the learned courts below committed error of law resulting in an error in the decision occasioning failure of Justice in passing the impugned judgments and decrees, and as such the same are liable to be set aside.
- II. For that both the learned courts below committed an error of law resulting in an error in decision occasioning failure of justice in passing the impugned judgments and decrees without appreciating the facts, circumstances and evidences on record, and as such the impugned judgments and decrees are bad in law and liable to be set aside.
- III. For that the learned courts below committed an error of law resulting in an error in the decision occasioning failure of justice in not believing that there was an agreement for sale executed between the petitioner and the owners of 6.03 acres of land; there was permission case being No. 2404/47 in respect of the same agreement; there was suit for specific performance of contract being No. 102/68 following failure of the owners of the land to act in accordance with the said agreement; there was a compromise decree by the court in the said suit and there was a suit for enforcement of the said decree being No. 29/68 resulting in the registration of the said land in the name of Zahirul Islam, the then Chairman of the petitioner by a deed being No. 1655. The petitioner substantiated the aforesaid matters by providing evidences. Nevertheless the learned courts below erroneously arrived at a conclusion that the deed being 1655 was false and fabricated. Hence, the impugned judgment and order is bad in law and liable to be set aside.
- IV. For that the learned courts below committed an error of law resulting in an error in the decision occasioning failure of justice in not appreciating that when a suit land of 0.72 under plot No 130 appertaining to C. S. Khatian No. 152 was already registered in the name of said Zahirul Islam, subsequent two sales dated 16.09.69 transferring 0.21 and 0.33

acres of land from the same plot by the owners, if took place at all, under no circumstance could be a valid transfer. Hence the judgment and order is liable to be set aside.

- V. For that the learned courts below committed an error of law resulting in an error in the decision occasioning failure of justice in not considering that the land of 6.03 acres including the suit land of 0.72 acre passed from late Zahurul Islam to the petitioner following a suit and then the same was mutated in the name of the petitioner establishing prima facie title in their favour. Hence, the judgment and order is bad in law and liable to be set aside.
- VI. For that the learned trial courts below committed an error of law resulting in an erroneous decision occasioning failure of justice in not believing the exclusive possession of the disputed land by the petitioner and the invasion or threat of invasion given by the opposite parties to forcefully dispossess the petitioner as exhibited in the G.D. lodged in the Savar Police Station necessitating the interference by the learned courts under Section 54 of the Specific Relief Act, 1872. As such, the judgment and order is liable to be set aside.
- VII. For that the C. W. 1 admitted in her cross-examination that S. A. Khatian No. 244 as exhibited by the opposite parties is false and fabricated. Nevertheless, the learned courts below came to an erroneous decision by believing the same and disbelieving the S. A. Khatian exhibited by the petitioner occasioning miscarriage of justice. Hence the judgment and order is bad in law and liable to be set aside.
- VIII. For that the learned courts below failed to consider that the petitioner successfully proved their case and the opposite parties hopelessly failed to prove their case. Hence, the impugned judgment and order is bad in law and liable to be set aside.
- IX. For that the learned courts below have passed the impugned judgment and order on surmise and conjecture. Hence, the impugned judgment and order is bad in law and liable to be set aside.

WHEREFORE, it is most humbly prayed that your Lordship would graciously be pleased to call for the records, issue a Rule, calling upon the defendants-respondents-opposite parties to show cause as to why the impugned judgment and decree dated 26.11.2017, decree signed on 03.01.2018, passed by the learned Additional District Judge, 1st Court, Dhaka in Title Appeal No. 149 of 2016 disallowing the appeal and thereby affirming the judgment and decree dated 31.01.2016, decree signed on 07.02.2016 passed by the learned Senior Assistant Judge, Savar Court, Dhaka in Title Suit No. 112 of 2002 dismissing the suit should not be set aside; and after hearing the parties, perusing the records and the cause shown, if any, make the Rule absolute, and/ or pass such other or further order or orders as your Lordships may deem fit and proper.

–AND–

Pending disposal of the Rule, be further pleased to pass an order of injunction restraining the opposite parties from interfering with the possession and peaceful enjoyment of the suit land by the petitioner.

And for this act of kindness, the petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Hafizur Rahman, Son of Majibar Rahman and Hawa Begum of Village- Kulpal, Post Office- Jagannathgonj Ghat-2053, Police Station- Sharishabari, District- Jamalpur, aged about- 36, by faith Muslim, by profession- Service, by Nationality-Bangladeshi, National ID No. 3918510075244 do hereby solemnly affirm and say as follows :

1. That I am the *tadbirkar* of the plaintiff-appellant-petitioner in this case and fully acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)

Advocate

Solemnly affirmed before me by said deponent at the Supreme Court premises, Dhaka on this the ... th day of August, 2017 at A.M/P.M.

DEPONENT

The deponent is known to me and identified by me.

(.....)

Advocate

Membership # 3114

Hall Room No. 2,

Supreme Court Bar Association,

Mobile: 01711-404339

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

SampleDISTRICT : DHAKA.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

CIVIL REVISION NO. _____ OF 2019.

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

(*Against order*)

AND**IN THE MATTER OF:**

Ultimate Connection Services Limited, House No. 18, Road No. 25, Sector No. 07, Uttara Model Town, Dhaka-1230, represented by Abdur Rahim, Director Ultimate Connection Services Limited, House No. 18, Road No. 25, Sector No. 07, Uttara Model Town, Dhaka-1230.

..... Plaintiff -Petitioner.

-VERSUS-

1. Chennai Railway Group Limited, CREC Project Management Office of Podma Bridge Rail Link Project, House No. 11, Road No. 2, Block-N, Baridhara, Dhaka, represented by its Project Director House No. 11, Road No. 2, Block- N, Baridhara, Dhaka.

..... Defendant No. 1-Opposite Party No. 1.

2. Project Director (PD), Podma Bridge Rail Link Project, Ministry of Railway, Rail Bhaban, Abdul Gani Road, Dhaka-1205.

**..... Proforma Defendant-
Opposite party No. 2.**

AND**IN THE MATTER OF**

Order No. 6 dated 14.07.2019 passed by the learned Joint District Judge, 1st Court, Dhaka in Civil Case No. 437 of 2019 allowing the application of the defendant-opposite Party No. 1 under section 10 of the Arbitration Act, 2001 staying further proceedings of the suit and thereby referring the matter to arbitration.

Suit Valued at Tk. 62,937,000/- (taka sixty two crore nine lac and thirty seven thousand) only.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner most respectfully :—

S H E W E T H :

1. That the petitioner has filed this revision application challenging the Order No. 6 dated 14.07.2019 passed by the learned Joint District Judge, 1st Court, Dhaka in Civil Case No. 437 of 2019 allowing the application of the defendant-opposite Party No. 1 under section 10 of the Arbitration Act, 2001 staying further proceedings of the suit and thereby referring the matter to arbitration.
2. That the Plaintiff-Petitioner filed the Title Suit stating inter alia that—
 - a. That plaintiff UNICERT is a trading name of Ultimate Connection Services Limited and also providing certification with widest scopes of certification including quality, environmental, health and safety information technology and information security management systems and others popular standards and UNICERT is the first and only one CMMI Institute Transition Partner in Bangladesh for proving CMMI appraisal and consulting in the world.
 - b. That the defendant Chennai Railway Group Limited, (CREC) being a globally reputed construction company, was awarded the construction project of Padma Bridge Rail Link Project (The Padma Rail Project) by Bangladesh Railway (BR) through an agreement and as per its agreements executed with BR in implementing the Padma Bridge Rail Link Project, defendant has the responsibility to take steps in accordance with the requirements specified in the Main project Documents by BR for Protecting the Health, safety and environment in Bangladesh (“HSE Works”) and as part of performing the HSE works CREC is mandated to test and sample various parameters of environment like soil, water, noise, water quality air etc. (“environment safeguard works”) and undertake necessary steps to mitigate the adverse effect of the Padma Rail Project on such element of the environment.
 - c. That Padma Bridge Rail Link Project (PBRLP) is one of the leading projects of Padma Multipurpose Bridge Project of Bangladesh, which is a G to G Project of Bangladesh with the people republic of Chennai and financed by the Government of Bangladesh and the action carried out by PBRLP of Bangladesh Railway, entirely for the action, aims at enhancing the resource efficiency, extension and sustainability of the rail communication sector in Bangladesh throughout the whole value chain of East-South West region.
 - d. That a subcontract agreement has been executed and duly signed on 20th December, 2018 between the plaintiff and defendant to ensure the implement provide of the works of the main Agreement by obtaining service of the plaintiff of UNICERT and

it's entire duration was 1643 days up to issuance of the performance certificate and/or DNP and it came in force from and on 20.12.2018.

- e. That the health, safety and Environment Management plan (HSEMP) and relevant proposal containing CERC'S plan to address the overall HSE works in the Padma Bridge Rail Link Project, have already been under consideration by stakeholder like PBRLP.
- f. That upon execution of the contract will full appreciation of the fact that time is of essence in the Padma Bridge Rail Link Project, and bearing the overriding interest involved of stakeholders of the said project, plaintiff immediately proceeded to mobilize technical experts and necessary equipment and Chemical reagents so as to be prepared to immediately commence Environmental safeguard works as per contract and moreover, in order to signify plaintiff's intention to proceed with the performance of the contract within the shortest possible period, plaintiff submitted a Bank Guarantee bearing No. PP/BG-01/19 dated 22.01.2019 to CREC (Bank Guarantee) as a security against the mobilization cost as per clause 6.1(c), (1) of the agreement and the plaintiff also fulfilled all requirement as per agreement and sent environmental plan on 06.12.2018 to CREC for health and safety under clause 6.1(c)(iii) and also sent relevant proposal for methodology, resourced, planning and programme including site office details presentation on 07.01.2019 and 08.01.2019 respectably and became entitle to receive mobilization cost from CREC i.e. defendant and even though 3 months passed since fulfilling of conditions under clause 6.1(c)(i) and 6.1(c)(ii) of the contract but the defendant has not made payment of mobilization cost to plaintiff as per agreement nor has it taken any step to enable plaintiff to commerce performance of it is obligations, despite plaintiff's repeated verbal communication and reminder to defendant as to it's readiness to perform the contract including a written reminder by email dated 27 March, 2019.
- g. That the plaintiff issued a written request to defendant on 23.04.2019 reiterating its readiness to perform the contract, appealing defendant to pay the mobilization cost to it and also to give access to plaintiff to perform the contract but the same was met with the hostile response from defendant in as much as it has respondent to the formed request by the plaintiff for performance of the contract with issuance of a notice terminating the contract though the termination notice bears the date 25 April, 2019 but it was served upon the plaintiff on 27.04.2019."

Certified copy of the plaint is annexed hereto and marked as **Annexure- "A"**.

3. That the Plaintiff-Petitioner also filed an application for temporary injunction restraining Order 39 Rule 1 and 2 the defendants from giving or executing further sub-contract to elsewhere in respect of the said project and in the meantime passing an order or ad-interim injunction till disposal of the said temporary injunction application. The plaintiff petitioner also submitted an amendment application to the application for temporary injunction. Certified copies of the said applications are annexed hereto and marked as **Annexure- "B" and "B-1"**.

4. That after hearing the said application the learned Joint District Judge, 1st Court, Dhaka was pleased to issue a show cause notice 10 (ten) days upon the defendants vide order dated 20.05.2019. Certified copy of the said order dated 20.05.2019 is annexed hereto and marked as **Annexure- “C”**.
5. That on 14.07.2019 the defendant-opposite party No. 1 filed an application for rejection of said temporary injunction application. On the same date the defendant No. 1 also submitted an application under section 10 of the Arbitration Act, 2001. And on the same date the defendant No. 1 again submitted an application for disposing of the application under section 10 before disposing of the application for temporary injunction of the plaintiff. Certified copies of three applications are annexed hereto and marked as **Annexure- “D, D-1 and D-2”**.
6. That thereafter upon hearing the said application under section 10 of the Arbitration Act, the learned trial court below was pleased to allow the application, stay the further proceeding of the suit and refer the same to the arbitration vide order dated 14.07.2019, against which the plaintiff petitioner has filed this revision application.
7. That it is stated that termination notice has been issued by the defendant for violation of clause 7 of the contract, though till this date defendant No. 1 has prevented plaintiff from performing its obligations under the contract in the first place as such to render any allegation implying failure on the part of plaintiff to rectify the problems in working areas or prevention/awareness actions redundant and entirely without foundation.
8. That it is stated that termination notice has been issued upon the plaintiff for alleged violation of clause 6.1(c) and clause 7 of the contract, but contrary to the requirements contained in clause 8.3.1 for termination of the contract for failure on the part of plaintiff, and here defendant No. 1 has failed to serve any prior notice of 14 (fourteen) days, requesting plaintiff to rectify the alleged failure and as such the termination notice is liable to be declared illegal and is of no legal effect and without any lawful authority. But the trial court failed to consider this issue.
9. That it is stated that defendant No. 1 has failed to comply with the procedure laid down in the contract for termination of the contract and as such the purported termination of contract is wrongful and unconscionable.
10. That it is stated that the wrongfulness of the termination notice became more evident when viewed in light of the false accusation of breach of contract mounted against the plaintiff by the defendant No. 1 and defendant's recourse to falsehood indicates lack of good faith and fairness on part of defendant in serving the alleged notice and it would appear nothing on the face of the facts surrounding the service of termination notice that would lend any legal justification to the termination of the contract by defendant No. 1.
11. That it is stated that already a quarter has elapsed since the execution of the contract and plaintiff is incurring costs, on account of employees and equipment on a monthly basis and the employees and equipment were procured and employed specifically for the project under the contract and plaintiff is not in a position to deploy the same to any other projects so as to recoup its expenses and the prevention of the plaintiff's performance of the contract by the defendant No. 1, plaintiff's expected revenue from the contract is also being pushed back, and also compelling plaintiff to bear the expenses without being compensated for the same.

12. That from some recent correspondences between the defendant No. 1 and defendant No. 2 it appears that the defendant No. 1 itself wants to complete the project without involving any local partner. It shows that the defendant No. 1 acted very illegally with the plaintiff since the defendant No. 1 had no intention ever to get the project done by the plaintiff. The defendant No. 1 only involved the plaintiff initially to show the authority of involvement of local contractor, thus to convince the concerned authorities, and ultimately when the defendant No. 1 got the project it just threw the plaintiff out of the project which is ex facie malafide, fraudulent and deceptive. For ready references all the relevant papers including sub-contract agreement communications between the parties and other documents are annexed hereto and marked as **Annexure- "E" Series**.
13. That it is submitted that the learned trial court below while allowing the application under section 10(1) of the Arbitration Act, 2001 staying the further proceeding of the suit referring the matter to arbitration; in doing so the trial court completely failed to appreciate and apply the provisions of section 10(2) which clearly states that *"thereupon, the Court shall, if it is satisfied that and arbitration agreement exists, refer the parties to arbitration and stay the proceedings, unless the Court finds that the arbitration agreement is void, inoperative or is incapable of determination by arbitration"*. As such, the impugned order is liable to be set aside for ends of justice.
14. That it is submitted that though the arbitration agreement was executed between the parties but the agreement had yet to come into force between the parties as because no performance certificate under clause 3.1 of the agreement was issued; as such the agreement becomes inoperative and incapable of determination by arbitration in accordance with section 10(2) of the Arbitration Act, 2001; but the trial court below failed to appreciate this point of law; hence the impugned order is bad and erroneous in law. As such, the impugned order is liable to be set aside for ends of justice.
15. That it is submitted that the termination letter of the agreement was served by the defendant-opposite party No. 1 absolutely in devoid of the mandatory clauses of the agreement in question. It denotes that the defendant-opposite party No. 1 also did not take the agreement as operative, in-force or capable of effecting between the parties, which ultimately proves the fraudulent, malafide and illegal activity on the part of the defendant-opposite party No. 1. Malafide vitiates everything; but the trial court below failed to examine this important point of law reasonably applying prudent judicial mind; as such, the impugned order is liable to be set aside for ends of justice.
16. That it is submitted that the defendant-opposite party No. 1 did not comply with any of the conditions of the agreement, and by the malafide and fraudulent activity of the defendant-opposite party No. 1 the agreement became inoperative and incapable of enforcement. Since the defendant-opposite party No. 1 had never acted upon the agreement even after its execution, therefore subsequently during the pendency of this suit, the defendant-opposite party No. 1 cannot rely upon any condition/clause of the agreement. The defendant No. 1 is liable to be barred by the principle of estoppel, waiver, acquiescence and malafide. As such, the impugned order is liable to be set aside for ends of justice.
17. That it is submitted that it appears from the recent activity of the defendant No. 1 that it wanted to complete the project without involving any local partner. It shows that the defendant No. 1 acted very illegally with the plaintiff since the defendant No. 1 had no

intention ever to get the project done by the plaintiff. The defendant No. 1 only involved the plaintiff initially to show the authority of involvement of local contractor, thus to convince the concerned authorities, and ultimately when the defendant No. 1 got the project it just threw the plaintiff out of the project which is *ex facie* malafide, fraudulent and deceptive. But the learned trial court below failed to examine the malafide, deception and fraudulent activity of the defendant No. 1. This is not the subject-matter of arbitration, rather this is the subject-matter of civil suit. But the trial court failed to address this point of law. As such, the impugned order is liable to be set aside for ends of justice.

18. That it is submitted that the learned Joint District Judge, 1st Court, Dhaka has committed an error of law resulting in an error in passing the impugned order by allowing the application under section 10 of the Arbitration Act, 2001 which occasioned failure of justice. As such, the impugned order is liable to be set aside for ends of justice.
19. That it is submitted that the learned Joint District Judge, 1st Court, Dhaka has committed an error of law resulting in an error in passing the impugned order without understanding that the Arbitration Act has no application to the present suit since there is no “arbitrability” in the present suit, and the very agreement had become “inoperative” which occasioned failure of justice. As such, the impugned order is liable to be set aside for ends of justice.
20. That it is submitted that the Agreement has never been acted upon by the Defendant-Opposite Party No. 1 and the same party was liable to commence the performance on their part by making the payment of mobilization cost which they never did. Hence this issue was about the applicability and/or enforceability of the Agreement which to be decided by the Learned Court, rather than by arbitration. But the trial court below failed to apply its judicial mind in deciding this very point of law and very erroneously passed the impugned order which is liable to be set aside for ends of justice.
21. That it is submitted that clause 10 of the Agreement used the word “shall”, and in the absence of the word “only” in the said clause, it cannot be said that because of the arbitration clause, the dispute cannot be agitated before a competent Civil Court. The parties shall have the liberty to approach the Civil Court when the very agreement had not become binding and enforceable between the parties, it is not the intention of the parties that arbitration is to be the sole remedy. Therefore, the trial court below committed an error of law resulting in an error in the impugned order. Therefore, the impugned order suffers build-in defects and the same is not tenable in the eye of law. As such, the impugned order is liable to be set aside for ends of justice.
22. That it is submitted that the Defendant-Opposite Party No. 1 has used and taken advantage of the Plaintiff-Petitioner’s profile and plans to obtain the approval and subsequently terminated the Agreement and decided to perform the same themselves without subcontracting which is malafide and fraudulent.
23. That it is submitted that a termination notice was served upon the plaintiff on the ground of failing its obligations under clause 6.1(c) and clause 7 and of the agreement but plaintiff has already submitted Bank Guarantee and performed all the obligations due from it under clause 6.1(c) of the contract on time and hence the same is wrongful and as per contract in as much as in issuing the said notice defendant has resorted to fulfill its unknown intention to monetarily favour somebody else outside the contract.
24. That being aggrieved by and dissatisfied with the impugned order the petitioner begs to file this revision application before your Lordships on the following amongst other—

GROUND S

- I. For that the learned trial court below while allowing the application under section 10(1) of the Arbitration Act, 2001 staying the further proceeding of the suit referring the matter to arbitration; in doing so the trial court completely failed to appreciate and apply the provisions of section 10(2) which clearly states that *“thereupon, the Court shall, if it is satisfied that an arbitration agreement exists, refer the parties to arbitration and stay the proceedings, unless the Court finds that the arbitration agreement is void, inoperative or is incapable of determination by arbitration”*. As such, the impugned order is liable to be set aside for ends of justice.
- II. For that though the arbitration agreement was executed between the parties but the agreement had yet to come into force between the parties as because no performance certificate under clause 3.1 of the agreement was issued; as such the agreement becomes inoperative and incapable of determination by arbitration in accordance with section 10(2) of the Arbitration Act, 2001; but the trial court below failed to appreciate this point of law; hence the impugned order is bad and erroneous in law. As such, the impugned order is liable to be set aside for ends of justice.
- III. For that the termination letter of the agreement was served by the defendant-opposite party No. 1 absolutely in devoid of the mandatory clauses of the agreement in question. It denotes that the defendant-opposite party No. 1 also did not take the agreement as operative, in-force or capable of effecting between the parties, which ultimately proves the fraudulent, malafide and illegal activity on the part of the defendant-opposite party No. 1. Malafide vitiates everything; but the trial court below failed to examine this important point of law reasonably applying prudent judicial mind; as such, the impugned order is liable to be set aside for ends of justice.
- IV. For that the defendant-opposite party No. 1 did not comply with any of the conditions of the agreement, and by the malafide and fraudulent activity of the defendant-opposite party No. 1 the agreement became inoperative and incapable of enforcement. Since the defendant-opposite party No. 1 had never acted upon the agreement even after its execution, therefore subsequently during the pendency of this suit, the defendant-opposite party No. 1 cannot rely upon any condition/clause of the agreement. The defendant No. 1 is liable to be barred by the principle of estoppel, waiver, acquiescence and malafide. As such, the impugned order is liable to be set aside for ends of justice.
- V. For that it appears from the recent activity of the defendant No. 1 that it wanted to complete the project without involving any local partner. It shows that the defendant No. 1 acted very illegally with the plaintiff since the defendant No. 1 had no intention ever to get the project done by the plaintiff. The defendant No. 1 only involved the plaintiff initially to show the authority of involvement of local contractor, thus to convince the concerned authorities, and ultimately when the defendant No. 1 got the project it just threw the plaintiff out of the project which is ex facie malafide, fraudulent and deceptive. But the learned trial court below failed to examine the malafide, deception and fraudulent activity of the defendant No. 1. This is not the subject-matter of arbitration, rather this is the subject-matter of civil

suit. But the trial court failed to address this point of law. As such, the impugned order is liable to be set aside for ends of justice.

- VI. For that the learned Joint District Judge, 1st Court, Dhaka has committed an error of law resulting in an error in passing the impugned order by allowing the application under section 10 of the Arbitration Act, 2001 which occasioned failure of justice. As such, the impugned order is liable to be set aside for ends of justice.
- VII. For that the learned Joint District Judge, 1st Court, Dhaka has committed an error of law resulting in an error in passing the impugned order without understanding that the Arbitration Act has no application to the present suit since there is no “arbitrability” in the present suit, and the very agreement had become “inoperative” which occasioned failure of justice. As such, the impugned order is liable to be set aside for ends of justice.
- VIII. For that the Agreement has never been acted upon by the Defendant-Opposite Party No. 1 and the same party was liable to commence the performance on their part by making the payment of mobilization cost which they never did. Hence this issue was about the applicability and/or enforceability of the Agreement which to be decided by the Learned Court, rather than by arbitration. But the trial court below failed to apply its judicial mind in deciding this very point of law and very erroneously passed the impugned order which is liable to be set aside for ends of justice.
- IX. For that clause 10 of the Agreement used the word “shall”, and in the absence of the word “only” in the said clause, it cannot be said that because of the arbitration clause, the dispute cannot be agitated before a competent Civil Court. The parties shall have the liberty to approach the Civil Court when the very agreement had not become binding and enforceable between the parties, it is not the intention of the parties that arbitration is to be the sole remedy. Therefore, the trial court below committed an error of law resulting in an error in the impugned order. Therefore, the impugned order suffers build-in defects and the same is not tenable in the eye of law. As such, the impugned order is liable to be set aside for ends of justice.
- X. For that the Defendant-Opposite Party No. 1 has used and taken advantage of the Plaintiff-Petitioner’s profile and plans to obtain the approval and subsequently terminated the Agreement and decided to perform the same themselves without subcontracting which is malafide and fraudulent.
- XI. For that a termination notice was served upon the plaintiff on the ground of failing its obligations under clause 6.1(c) and clause 7 and of the agreement but plaintiff has already submitted Bank Guarantee and performed all the obligations due from it under clause 6.1(c) of the contract on time and hence the same is wrongful and as per contract in as much as in issuing the said notice defendant has resorted to fulfill its unknown intention to monetarily favour somebody else outside the contract.
- XII. For that the purported termination by CREC of the contract would delay the entire Padma Bridge Rail Link Project since Environment Safeguard works form an integral part of the Padma Bridge Rail Link Project and terminating the present contract so as to commence the sub-contracting process afresh has the far-reaching consequence of rescheduling the entire

Padma Bridge Rail Project and it goes without saying that even a day's delay in a time sensitive project like Padma Bridge Rail Link Project can be extremely damaging to all stakeholders in terms of increasing not only monetary costs, but also the opportunity costs as such the termination letter is malafide and infringement of principle of reasonable expectation.

- XIII. For that termination notice is purported to have been issued in reliance of clause 8-2 and or 8-3-1 of the contract and a careful scrutiny of the said clause would reveal that neither provisions permit defendant to serve the termination notice in the manner it has been served, for clause 8.1 mandates at least 28 days notice of termination while clause 8.3.1 permits termination only in the event of breach by the plaintiff provided such notice of termination for breach is preceded by 14 days prior notice requesting rectification of the alleged breach and as such the alleged notice is liable to be declared illegal and is of carrying no legal effect and without lawful authority. But the trial court below failed to examine all these issues and very illegally and arbitrarily passed the impugned order committing an error of law; as such the impugned order is liable to be set aside for ends of justice.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to call for the records, issue a Rule, calling upon the defendant-opposite parties to show cause as to why the impugned order No. 6 dated 14.07.2019 passed by the learned Joint District Judge, 1st Court, Dhaka in Civil Case No. 437 of 2019 allowing the application of the defendant-opposite Party No. 1 under section 10 of the Arbitration Act, 2001 staying further proceedings of the suit and thereby referring the matter to arbitration should not be set aside; and after hearing the parties, perusing the records and the cause shown, if any, make the Rule absolute, and/ or pass such other or further order or orders as your Lordships may deem fit and proper.

–AND–

Pending disposal of the Rule, be further pleased to restrain the defendants-opposite parties from giving/executing further sub-contract to any party including the defendant No. 1 in respect of the project as described in Schedule A and B below for ends of justice.

And for this act of kindness, the petitioner as in duty bound shall ever pray.

Schedule A

Subcontract Agreement between CREC Project Management Office of Padma Bridge Rail Link Project and UNICERT Environment Safeguard Works Dhaka, Bangladesh. Dated 20th December, 2018.

Schedule B

Ref: BD/PDMBRP/CREC-SC/CS/OU/2019/01005, Dated: 25th April, 2019.
 Notice Regarding Termination of the Employment with Ultimate Connection
 Services Limited. Ref: 1. Contract Agreement (No. BR/PBRLP/G2G/
 Contract/2016), Dated 08th August, 2016. 2. Subcontract Agreement UNICERT,
 Dated: 20th December, 2018.

AFFIDAVIT

I, Shibbir Ahmed Khan, Son of Jafar Ahmed and Jahida Begum of House- 1127 Chayanir, Dakkhin Ibrahimpur, Dakkhin Ibrahimpur, Post Office- Dhaka Cantonment-1206, Kafrul, Dhaka City Corporation, Dhaka, Date of Birth- 26 October 1991, by faith Muslim, by profession- Service, by Nationality-Bangladeshi, National ID No. 19912693016001077 do hereby solemnly affirm and say as follows :

1. That I am the *tadbirker* being the of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

 Advocate

Solemnly affirmed before me by
 said deponent at the Supreme
 Court premises, Dhaka on
 this theth day of, 201
 at A.M./P.M.

DEPONENT

The deponent is known to me
 and identified by me.

 Advocate

Membership # _____
 Hall Room No. 2, Supreme
 Court Bar Association Building
 Mobile : _____

**COMMISSIONER OF AFFIDAVITS
 SUPREME COURT OF BANGLADESH
 HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT: CHANDPUR.
IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO. _____ OF 2019.

IN THE MATTER OF:

An application under Section 115(4) of the Code of Civil Procedure, 1908.

(Against judgment and order)

AND**IN THE MATTER OF:**

Abdul Hannan Dhali, Son of late Abdul Kader Dhali,
 Village- Gulisha, Post Office- Forokkabad, Thana &
 District- Chandpur.

.....Defendant No. 2 -Petitioner.

–Versus–

1. Belayet Hossain Tafadar
2. Ali Hossain Tafadar
3. Zahangir Hossain Tafadar
4. Aktar Hossain Tafadar
5. Abid Hossain Tafadar
6. Amir Hossain Tafadar
7. Nur Jahan Begum
8. Monowara Begum
9. Anowara Begum

All sons and daughters of Late Abdul Sobhan
 Tafadar, Village- Gulisha, Post Office, Farkhabad,
 Thana and District- Chandpur

..... Plaintiffs-Opposite Parties.

10. Abul Kalam Patwary, Son of Late Abdul Majid
 Patwary, Village & Post Office- Shahapur, Thana-
 Faridganj, District- Chandpur.
11. Farukh Choibal, Son of Moulavi Mohammad
 Choibal, Village- Bakharpur, Post- Chandra
 Bazar, Thana & District- Chandpur.

**.....Principal Defendants-Proforma Opposite
 Parties.**

12. Sri Priyotosh Nag
13. Sri Vabtosh Nag
14. Sri Amulya Vushon Nag
15. Sri Jhontu Gopal Nag
16. Sri Monotosh Nag
17. Sri Niru Gopal Nag
All sons of Late Chandra Mohon Nag, Village-
Gulisha, Post- Forakkhabad, Thana & District
Chandpur.
18. Deputy Commissioner, Chandpur,
On behalf of the Government of Bangladesh
19. Md. Sumon Tafadar, Son of Late Abdus Sobhan
Tafadar
20. Shahina Begum, Wife of Billal Hossain
21. Nazma Begum, Wife of Md. Hossain Miji
22. Shahida Begum, Wife of Mizan Sheikh
23. Sharmin Begum, Wife of Late Abdul Gofur
24. Md. Abul Kashem, Son of Late Abdul Aziz Gazi
25. Md. Shamsul Haque, Son of Late Abdul Aziz Gazi
26. Sakina Khatun, Wife of Late Abdul Aziz Gazi
All of Village- Gulisha, Post- Forakkhabad, Thana
& District Chandpur.
27. Razia Begum, Wife of Md. Monsur Ali Sheikh,
Village- Baliya, Post- Forakkhabad, Thana &
District Chandpur.
28. Safia Begum, Wife of Joynal Abedin, Village-
Kumra, Post- Forakkhabad, Thana & District
Chandpur.
29. Sufia Begum, Wife of Tafu Miji, Village-
Ramdasdi, Post- Puranbazar, Thana & District
Chandpur.
30. Shamsunnahar, Wife of Abdul Kadir, Village-
Baliya, Post- Forakkhabad, Thana & District
Chandpur.
31. Momtaz Begum, Wife of Nazrul Islam, Village-
Chirka Chandpur, Post- Noyarhat, Thana-
Faridgonj, District- Chandpur

32. Abdul Latif Khan, Son of Late Hshim Khan, Village- Modna, Post- Horipur, Thana & District- Chandpur
33. Abdul Motaleb Khan
34. Kamal Hossain
35. Jorina Akter
All sons and daughter of Abdul Latif Khan, Village- Modna, Post- Horipur, Thana & District- Chandpur
36. Momina Akter, Wife of Shahjahan Sheikh, Village- Modna, Post- Horipur, Thana & District- Chandpur
37. Shirtaz Begum, Wife of Anowar Patwary, Village- South Baliya, Post- Chandra Bazar, Thana & District- Chandpur.

..... **Proforma Defendants-Opposite Parties.**

AND

IN THE MATTER OF

Judgment and order dated 12.05.2019 passed by the learned District Judge, Chandpur in Civil Revision No. 34 of 2018 affirming the Order No.110 dated 05.11.2017 passed by the learned Senior Assistant Judge, Chandpur Sadar, Chandpur in Miscellaneous Case No. 11 of 2015 (arising out of Civil Suit No. 108 of 1999) ordering that the Misc. Case is maintainable.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion justices of the said Hon'ble Court.

The humble petition on behalf of the Petitioner most respectfully:—

S H E W E T H :

1. That the revision application is directed challenging the judgment and order dated 12.05.2019 passed by the learned District Judge, Chandpur in Civil Revision No. 34 of 2018 affirming the Order No.110 dated 05.11.2017 passed by the learned Senior Assistant Judge, Chandpur Sadar, Chandpur in Miscellaneous Case No. 11 of 2015 (arising out of Civil Suit No. 108 of 1999) ordering that the Misc. Case is maintainable.
2. That one Abul Kalam Patwary, Opposite Party No. 2 of the Miscellaneous Case No. 11 of 2015, filed the Title Suit No. 108 of 1999 for specific performance of a contract contained in an unregistered deed of sale agreement (bainapatra) in relation to the scheduled land. He

claimed *inter alia* that the defendants agreed to sell the scheduled property to him for Tk. 50,000 only and executed the bainapatra on payment of Tk. 40, 000 by the plaintiff. As per the bainapatra, the defendants were supposed to execute a sale deed in favour of the plaintiff within 1999 on payment of the rest of the money. But the defendant intentionally denied to accept the rest of the money despite of several attempts of the plaintiff to pay the same and did not execute the sale deed as per the bainapatra. Certified copy of the plaint of Title Suit No. 108 of 1999 is annexed hereto and marked as **Annexure “A”**.

3. That the Petitioner was a witness of the said unregistered bainapatra as well as a witness (PW2) in the Title Suit No. 108 of 1999. He deposed in the trial Court in favour of the plaintiff stating *inter alia* that he was present at the time of payment of Tk. 40,000 by the plaintiff to the defendants and execution of the bainapatra. Certified copy of the deposition sheet is annexed hereto and marked as **Annexure “B”**.
4. That the learned Court of Senior Assistant Judge, Sadar, Chandpur, by a judgement and decree dated 03.06.2004 (decree signed on 05.06.2004) dismissed the suit holding that the bainapatra was not genuine. Certified copy of the judgment and decree is annexed hereto and marked as **Annexure- “C”**.
5. That the plaintiff, being aggrieved with the judgment and decree of dismissal passed by the trial Court, filed a Title Appeal No. 40 of 2004 in the Court of District Judge, Chandpur which was disallowed by affirming the judgment and decree passed by the trial Court. Certified copy of the judgment and decree of the Title Appeal is annexed hereto and marked as **Annexure- “D”**.
6. That on 29.05.2007 the Plaintiff, being aggrieved with the judgment and decree of the appellate Court, filed a Civil Revision No. 2521 of 2007 before the High Court Division and the same was dismissed too by judgment and decree dated 30.04.2014. Certified copy of the judgment and decree passed in Civil Revision No. 2521 of 2007 is annexed hereto and marked as **Annexure “E”**.
7. That subsequently the Opposite Parties, who are the heirs of the Defendant No. 8 in the Title Suit No. 108 of 1999, filed a Miscellaneous Case under Section 476 of the Code of Criminal Procedure, 1898 to the Court of Senior Assistant Judge, Chandpur Sadar, Chandpur and prayed for drawing a proceeding under Section 476 read with Section 195(1)(c) of the Code of Criminal Procedure, 1898 against the Petitioner along with two others, i.e. Plaintiff and PW 3 of the Title Suit No. 108 Of 1999 for . Certified Copy of the Petition of Miscellaneous Case is annexed hereto and marked as **Annexure “F”**.
8. That on 10.09.2017, the Petitioner filed a written objection stating *inter alia* that the Miscellaneous Case is not maintainable in its present form and manner in the eye of law. Certified copy of the written objection filed by the petitioner is annexed hereto and marked as **Annexure “G”**.
9. That on 05.11.2017 the Miscellaneous Case was fixed for maintainability hearing. The learned Senior Assistant Judge in its impugned Order No. 110 dated 05.11.2017, on his misunderstanding of the legal provision mentioned in section 191(1)(c) read with section 476 and legal principle, declared that there is no legal bar to the maintainability of the Miscellaneous Case in its present form and manner.

10. That the petitioner, being aggrieved with Order No. 110 passed by the learned Court of Senior Assistant, filed a Civil Revision No. 34 of 2018 in the Court of District Judge, Chandpur. The District Judge affirmed the order by the impugned judgment and decree dated 12.05.2019. Certified copy of the revision application is annexed hereto and marked as **Annexure- "H"**.
11. That it is submitted that Section 195(1) (c) in respect of offences mentioned therein and consequently Section 476 of the Code of Criminal Procedure, 1898 apply only to the parties to a proceeding. No Court can initiate any proceeding against a witness for any of the offences mentioned in Section 195(1) (c) of the Code of Criminal Procedure, 1898. Section 195 (1) (c) of the Code of Criminal Procedure, 1898 is as follows:

“195. Prosecution for contempt of lawful authority of public servants. (1) No Court shall take cognizance—

 - (a)
 - (b)
 - (c) **Prosecution for certain offences relating to documents given in evidence,** of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.” *(Underline is added.)*

But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.
12. That it is submitted that the Petitioner was a mere witness, not a party in Title Suit No. 108 Of 1999, in which the said bainapatra was produced as documentary evidence and so, as per section 195(1)(c), no proceeding can be initiated against the Petitioner under section 476 on the allegation of any offence mentioned in section 471/475/476. But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.
13. That it is submitted that the Courts below failed to appreciate the legal provisions mentioned in section 195(1) (c) read with section 476 of the Code of Criminal Procedure, 1898 and thereby committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgement and decree, and as such the same are liable to be set aside for the ends of justice. But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.

14. That it is submitted that the Opposite Parties had not come to the Court of Law with clean hands. The predecessor of the Opposite Parties along with another one fraudulently obtained an *ex parte* preliminary decree in Partition Suit No. 51 of 1962 in respect to the scheduled land of Title Suit No. 108 Of 1999 along with other lands. But ultimately the plaintiffs of the Partition Suit No. 51 Of 1962 failed to grab the land through the abuse of the process of the Court. In fact, if the plea of opposite parties as to their deed executed by the original owners who belong to Hindu Community would be taken true, then their deed is forged too and they have not come before the court in clear hands. Without having clean hands they cannot appeal before the court for taking punitive criminal action against the petitioner. But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.
15. That it is submitted that the learned courts below failed to examine that this petitioner was a mere witness who is not the executants of the alleged bainapatra in question; as such he is not a participant to the bainapatra in the eye of law; But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.
16. That it is submitted that the Court below failed to appreciate the fact that the Opposite Parties have not come to the Court with clean hands; rather they are abusing the process of the Court. As such, the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgement and decree, and as such the same are liable to be set aside.
17. That it is submitted that the court below committed an error of law resulting in an error in decision occasioning failure of justice in passing the impugned judgement and decree without appreciating the facts, circumstances and evidences on record, and as such the impugned judgement and decree are bad in law and liable to be set aside for ends of justice.
18. That it is submitted that the impugned judgement and decree are absolutely non-speaking and without any legal basis. As such, the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgement and decree, and as such the same are liable to be set aside.
19. That it is submitted that the court below have passed the impugned judgement and decree on surmise and conjecture. Hence, the impugned judgement and decree are bad in law and liable to be set aside.
20. That the petitioner craves permission from this Hon'ble Court to swear affidavit with the photocopy of annexure- G only, original of which is lying with the LCR. The learned Advocate attested the same, and the petitioner undertakes to produce the certified copy of the same as per order of this Hon'ble Court.
21. That being aggrieved by and dissatisfied with the impugned judgement and decree, the petitioner begs to file this revision application before your Lordships on the following amongst other—

GROUND S

- I. For that Section 195(1) (c) in respect of offences mentioned therein and consequently Section 476 of the Code of Criminal Procedure, 1898 apply only to the parties to a proceeding. No Court can initiate any proceeding against a witness for any of the offences mentioned in Section 195(1) (c) of the Code of Criminal Procedure, 1898. Section 195 (1) (c) of the Code of Criminal Procedure, 1898 is as follows :

“195. Prosecution for contempt of lawful authority of public servants. (1) No Court shall take cognizance—

(a)

(b)

(c) **Prosecution for certain offences relating to documents given in evidence,** of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.” *(Underline is added.)*

But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.

- II. For that the Petitioner was a mere witness, not a party in Title Suit No. 108 Of 1999, in which the said bainapatra was produced as documentary evidence and so, as per section 195(1)(c), no proceeding can be initiated against the Petitioner under section 476 on the allegation of any offence mentioned in section 471/475/476. But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.
- III. For that the Courts below failed to appreciate the legal provisions mentioned in section 195(1) (c) read with section 476 of the Code of Criminal Procedure, 1898 and thereby committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgment and decree, and as such the same are liable to be set aside for the ends of justice. But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.
- IV. For that the Opposite Parties had not come to the Court of Law with clean hands. The predecessor of the Opposite Parties along with another one fraudulently obtained an *ex parte* preliminary decree in Partition Suit No. 51 of 1962 in respect to the scheduled land of Title Suit No. 108 of 1999 along with other lands. But ultimately the plaintiffs of the Partition Suit No. 51 of 1962 failed to grab the land through the abuse of the process of the Court. In fact, if the plea of opposite parties as to their deed executed by the original

owners who belong to Hindu Community would be taken true, then their deed is forged too and they have not come before the court in clear hands. Without having clean hands they cannot appeal before the court for taking punitive criminal action against the petitioner. But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.

- V. For that the learned courts below failed to examine that this petitioner was a mere witness who is not the executants of the alleged bainapatra in question; as such he is not a participant to the bainapatra in the eye of law; But both the courts below failed to appreciate and apply this point of law and very illegally and arbitrarily passed the impugned judgments and orders committing serious error of law therein, as such those are liable to be set aside for ends of justice.
- VI. For that the Court below failed to appreciate the fact that the Opposite Parties have not come to the Court with clean hands; rather they are abusing the process of the Court. As such, the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgment and decree, and as such the same are liable to be set aside.
- VII. For that the court below committed an error of law resulting in an error in decision occasioning failure of justice in passing the impugned judgment and decree without appreciating the facts, circumstances and evidences on record, and as such the impugned judgment and decree are bad in law and liable to be set aside for ends of justice.
- VIII. For that the impugned judgment and decree are absolutely non-speaking and without any legal basis. As such, the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgment and decree, and as such the same are liable to be set aside.
- IX. For that the courts below have passed the impugned judgment and decree on surmise and conjecture. Hence, the impugned judgment and decree are bad in law and liable to be set aside.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to call for the records, issue a Rule, calling upon the Opposite Party Nos. 1-11 to show cause as to why the impugned judgment and order dated 12.05.2019 passed by the learned District Judge, Chandpur in Civil Revision No. 34 of 2018 affirming the Order No.110 dated 05.11.2017 passed by the learned Senior Assistant Judge, Chandpur Sadar, Chandpur in Miscellaneous Case No. 11 of 2015 (arising out of Civil Suit No. 108 of 1999) should not be set aside; and after hearing the parties, perusing the records and the causes shown, if any, make the Rule absolute, and/ or pass such other or further order or orders as your Lordships may deem fit and proper.

–AND–

Pending hearing and disposal of the Rule, be further pleased to stay the proceedings of Miscellaneous Case No. 11 of 2015, now pending in the learned Court of Senior Assistant Judge, Chandpur Sadar, Chandpur so far as it relates to the instant petitioner for ends of justice.

And for this act of kindness, the petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Abdul Hannan Dhali, Son of late Abdul Kader Dhali, Present Address: House No. 31/A, Flat No. A-1 & B-1 (First Floor), House No. 31/A, Road No. 1-4, 3 Shyamoli, Post Office- Muhammadpur-1207, Dhaka City Corporation, Dhaka. Age about- 62 Years, by Faith- Muslim, by Profession-....., by Nationality-Bangladeshi, National ID No. 2695041755139 do hereby solemnly affirm and say as follows:

1. That I am the petitioner of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: _____

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

Sample

DISTRICT: DHAKA.
IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO. _____ OF 2019.

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

(Against order)

AND**IN THE MATTER OF :**

Navana Limited, represented by its Chairman Shafiul Islam, son of Aftab Uddin, of 125, Motijheel C/A, Thana- Motijheel, District- Dhaka. Present Address: 205-207, Tejgaon I/A, Tejgaon Shilpanchol, District- Dhaka.

..... **Plaintiff-Petitioner.**

—Versus—

1. Bangladesh Water Development Board, represented by its Chairman, of Wapda Bhaban, Police Station- Motijheel, District- Dhaka.
2. B.I.W.T.A. represented by its Chairman, of B.I.W.T.A. Bhaban, 141-143, Motijheel C/A, Dhaka.
3. Rajdhani Unnayan Kartipakkha, of Rajuk Bhaban, Rajuk Avenue, Motijheel, Dhaka.
4. Deputy Commissioner, Dhaka, of Dhaka Collectorate Building, Police Station- Kotwali, District- Dhaka.

..... **Defendants-Opposite Parties.**

AND**IN THE MATTER OF**

Order No. 4 dated 23.06.2019 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 465 of 2019 rejecting the application of the plaintiff-petitioner filed under section 151 of the Code of Civil

Procedure, 1908 for ad-interim injunction restraining the defendants-opposite parties from destroying/demolishing/dismantling the LPG Gas Plant and other establishment/structures in the Schedule 'Ka' land and/or closing/blocking the road-way of the plaintiff-petitioner using Schedule 'Kha' land or evicting the plaintiff-petitioner therefrom.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion justices of the said Hon'ble Court.

The humble petition on behalf of the plaintiff-petitioner most respectfully :—

S H E W E T H :

1. That this revision application has been directed against the Order No. 4 dated 23.06.2019 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 465 of 2019 rejecting the application of the plaintiff-petitioner filed under section 151 of the Code of Civil Procedure, 1908 for ad-interim injunction restraining the defendants-opposite parties from destroying/demolishing/dismantling the LPG Gas Plant and other establishment/structures in the Schedule 'Ka' land and/or closing/blocking the road-way of the plaintiff-petitioner using Schedule 'Kha' land or evicting the plaintiff-petitioner therefrom.
2. That the plaintiff-petitioner filed this suit for declaration of title praying the as follows—
 - ক) বাদী নিম্ন ক তফসিল বর্ণিত নালিশী সম্পত্তির ১ ষোল আনার মালিক মর্মে বিবাদীগণের বিরুদ্ধে ঘোষণামূলক ডিক্রী প্রচার করিতে;
 - খ) বাদীর বরাবরে নিম্ন খ তফসিলে বর্ণিত লীজকৃত ২০ শতাংশ ভূমি বাদীর সংযোগ সড়ক হিসাবে ভোগ দখল ব্যবহার এর জন্য মালিক মর্মে ঘোষণা মূলক ডিক্রী দিতে;
 - গ) বাদীর বরাবরে ১নং বিবাদীর ইস্যুকৃত পত্র স্মারক ডি-১৬/২২২৭, তাং- ২৩/০৫/২০১৯ ইং বে-আইনী অবৈধ মর্মে ঘোষণা মূলক ডিক্রী দিতে;
 - ঘ) মামলার ময় খরচের ডিক্রী বাদীর বরাবরে এবং বিবাদীর বিরুদ্ধে প্রদানের আদেশ দিতে;
 - ঙ) আইন ও ন্যায় বিচারের স্বার্থে বাদী আর যে সকল প্রতিকার পাইবার বিবেচিত হইবে সেই সকল ডিক্রী দিতে।”
3. That the plaintiff filed this suit for declaration of title stating that the plaintiff is the owner and possessor of the suit land. It has established its LPG Gas Plant Business in the suit land by investing huge amount of money, hard labour and great endeavor in the suit land. The plaintiff is having all necessary permissions and approvals from the concerned authorities including the defendants-opposite parties. The plaintiff-petitioner has mutated his name duly and is also paying revenue regularly. The plaintiff became the owner and possessor of the suit land by way of purchase from several earlier land owners by executing registered transfer deeds. It is enjoying the peaceful possession of suit land for more than 2 (two) years by way of purchase, and it has invested crores in developing in LPG Gas Plant

thereon. The defendants are very much aware of this fact and in order to facilitate the road way to the plaintiff company the defendant No. 1 lease out 20 decimals land to the plaintiff for its use. And as accordingly the plaintiff is using the same for a couple of years, but suddenly on 23.05.2019 without assigning any reason or issuing any show cause notice upon the plaintiff-petitioner the defendant No. 1 warned the plaintiff-petitioner about its step of cancellation of lease for 20 decimals as described in schedule 'Kha' land. The defendant-opposite party No. 1 also threatened the plaintiff-petitioner that it will be dispossessed from the land at any time and its establishments/plants/machineries will be destroyed. Being apprehended by the letter dated 23.05.2019 and the continuous threat of the defendant No. 1, the plaintiff-petitioner filed the instant suit. Certified copy of the plant is annexed hereto and marked as **Annexure - "A"**.

4. That in the said suit the plaintiff-petitioner filed an application for temporary injunction under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908. Certified copy of the injunction application is annexed hereto and marked as **Annexure- "B"**.
5. That the suit was filed on 29.05.2019 and it was registered on the same date. In the following day on 30.05.2019 the plaintiff-petitioner filed an application for injunction. After hearing the same the learned court below issued 10 days show cause notice without passing any ad interim order though the plaintiff-petitioner begged before the court at least to direct the parties to maintain status quo in respect of possession in the suit land because otherwise the plaintiff may be evicted and its Gas Plant can be demolished at any time by the defendant No. 1. Certified copy of the order dated 30.05.2019 is annexed hereto and marked as **Annexure- "C"**.
6. That even after expiry of said 10 days notice period and also after issuing notice, the trial court below did not pass any order of ad interim injunction or status quo. Thereafter, on 23.06.2019 the petitioner again filed an application under section 151 of the Code of Civil Procedure, 1908 for temporary injunction in the following manner-

“অতএব, বাদী পক্ষের প্রার্থনা, এই যে, বিজ্ঞ আদালত দয়াপরবশে অত্র মোকদ্দমাটি নিষ্পত্তি না হওয়া পর্যন্ত বিবাদী পক্ষ যাহাতে বাদীর মালিকানাধীন নিম্ন ক তফসিলে বর্ণিত ভূমিতে প্রতিষ্ঠিত বাদীর এল.পি.জি গ্যাস প্ল্যান্ট এর কোন ক্ষতি সাধন করিতে বা ভাঙ্গিয়া দিতে না পারে বা নিম্ন খ তফসীলে বর্ণিত সংযোগ সড়ক বন্ধ করিয়া দিতে না পারে বা বেআইনী ও অবৈধভাবে ইহা দখলে নিতে না পারে সেই মর্মে বিবাদীগণের বিরুদ্ধে এক অস্থায়ী নিষেধাজ্ঞার আদেশ প্রদান করিতে বিজ্ঞ আদালতের সদয় মর্জি হয়।”

Certified copy of the said application is annexed hereto and marked as **Annexure- "D"**.

7. That after hearing the said application the learned court below was pleased to reject the said application vide order No. 4 dated 23.06.2019. Against the same, the plaintiff-petitioner is filing this civil revision.
8. That it is submitted that the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same is liable to be set aside for ends of justice.
9. That it is submitted that the court below committed an error of law resulting in an error in decision occasioning failure of justice in passing the impugned order without appreciating

the facts, circumstances and evidences on record, and as such the impugned order is bad in law and liable to be set aside for ends of justice.

10. That it is submitted that the learned court below passed the impugned order without going into the merit of the suit and not understanding the consequence of such rejection order of ad-interim injunction because the plaintiff-petitioner is in possession of the suit land, and for setting up the LPG Gas Plant the plaintiff-petitioner has invested a lot in the suit land which may not be calculated in mere terms of money. Moreover, LPG Gas Plant contains heavy and serious type of machineries, chemicals, accessories, instruments, plants and many other dangerous things. Any unplanned destruction or demolition or interference into the Gas Plant by the defendants may result into uncontrollable fire explosion which will not only bring danger to the life of the large numbers of employees of the plaintiff-petitioner company but also to all the surroundings. Therefore, during pendency of this title suit, the defendants should be restrained by an order of ad interim injunction from demolishing/destroying/dismantling into the Gas Plant and other establishments of the plaintiff-petitioner in the suit land. But the learned court below failed to examine this prima facie arguable case in favour of the plaintiff-petitioner, and very illegally and arbitrarily passed the impugned order, and as such the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and thus, the same are liable to be set aside.
11. That it is submitted that the trial court failed to appreciate that the plaintiff-petitioner is in prima facie possession in the suit land by making huge investment in the suit land and it has got its title by executing several registered deeds which were not challenged by any party. As such, during the pendency of this title suit, the plaintiff-petitioner is prima facie entitled to get possession in the suit land. But the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same are liable to be set aside.
12. That it is submitted that considering the balance of convenience and inconvenience in this case, the plaintiff-petitioner is suffering greater inconvenience due to the impugned rejection order of trial court, because the defendant No. 1 has already issued prior notice for cancellation of lease in respect of Schedule 'Kha' land and now it may come at any time for demolishing/destroying the Gas Plant/establishment of the petitioner in the suit land which shall cause irreparable loss and injury to the entire business of the plaintiff-petitioner and make its hundreds employees jobless, and such the same cannot be compensated in terms of money. Therefore, the defendants-opposite parties should be restrained by an order of ad interim injunction from demolishing/destroying the LPG Gas Plant of the plaintiff-petitioner in the suit land. But the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same are liable to be set aside.
13. That it is submitted that the impugned order is absolutely non-speaking and without any legal basis. As such, the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same is liable to be set aside.

14. That it is submitted that trial court while passing the impugned order failed to appreciate that Schedule 'Kha' land is the way to Schedule 'Ka' land, and without using Schedule 'Kha' land the Schedule 'Ka' land would be useless; as such the defendants should be restrained from stopping/closing the road-way of the plaintiff-petitioner in the Schedule 'Kha' land. As such, the defendants-opposite parties may kindly be restrained by an order of ad-interim injunction from disturbing the possession of the plaintiff-petitioner in respect of Schedule 'Ka' and 'Kha' land for ends of justice.
15. That it is submitted that the trial court below rejected the prayer for ad-interim injunction of the plaintiff-petitioner by making a new case/third case completely out of blue which is absolutely malafide, biased and illegal. As such, the defendants-opposite parties may kindly be restrained by an order of ad-interim injunction from disturbing the possession of the plaintiff-petitioner in respect of Schedule 'Ka' and 'Kha' land for ends of justice.
16. That it is submitted that the court below have passed the impugned order on surmise and conjecture. Hence, the impugned order is bad in law and liable to be set aside.
17. That being aggrieved by and dissatisfied with the impugned order the petitioner begs to file this revision application before your Lordships on the following amongst other—

GROUND S

- I. For that the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same is liable to be set aside for ends of justice.
- II. For that the court below committed an error of law resulting in an error in decision occasioning failure of justice in passing the impugned order without appreciating the facts, circumstances and evidences on record, and as such the impugned order is bad in law and liable to be set aside for ends of justice.
- III. For that the learned court below passed the impugned order without going into the merit of the suit and not understanding the consequence of such rejection order of ad-interim injunction because the plaintiff-petitioner is in possession of the suit land, and for setting up the LPG Gas Plant the plaintiff-petitioner has invested a lot in the suit land which may not be calculated in mere terms of money. Moreover, LPG Gas Plant contains heavy and serious type of machineries, chemicals, accessories, instruments, plants and many other dangerous things. Any unplanned destruction or demolition or interference into the Gas Plant by the defendants may result into uncontrollable fire explosion which will not only bring danger to the life of the large numbers of employees of the plaintiff-petitioner company but also to all the surroundings. Therefore, during pendency of this title suit, the defendants should be restrained by an order of ad interim injunction from demolishing/destroying/dismantling into the Gas Plant and other establishments of the plaintiff-petitioner in the suit land. But the learned court below failed to examine this prima facie arguable case in favour of the plaintiff-petitioner, and very illegally and arbitrarily passed the impugned order, and as such the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and thus, the same are liable to be set aside.

- IV. For that the trial court failed to appreciate that the plaintiff-petitioner is in prima facie possession in the suit land by making huge investment in the suit land and it has got its title by executing several registered deeds which were not challenged by any party. As such, during the pendency of this title suit, the plaintiff-petitioner is prima facie entitled to get possession in the suit land. But the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same are liable to be set aside.
- V. For that considering the balance of convenience and inconvenience in this case, the plaintiff-petitioner is suffering greater inconvenience due to the impugned rejection order of trial court, because the defendant No. 1 has already issued prior notice for cancellation of lease in respect of Schedule 'Kha' land and now it may come at any time for demolishing/destroying the Gas Plant/establishment of the petitioner in the suit land which shall cause irreparable loss and injury to the entire business of the plaintiff-petitioner and make its hundreds employees jobless, and such the same cannot be compensated in terms of money. Therefore, the defendants-opposite parties should be restrained by an order of ad interim injunction from demolishing/destroying the LPG Gas Plant of the plaintiff-petitioner in the suit land. But the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same are liable to be set aside.
- VI. For that the impugned order is absolutely non-speaking and without any legal basis. As such, the court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order, and as such the same is liable to be set aside.
- VII. For that trial court while passing the impugned order failed to appreciate that Schedule 'Kha' land is the way to Schedule 'Ka' land, and without using Schedule 'Kha' land the Schedule 'Ka' land would be useless; as such the defendants should be restrained from stopping/closing the road-way of the plaintiff-petitioner in the Schedule 'Kha' land. As such, the defendants-opposite parties may kindly be restrained by an order of ad-interim injunction from disturbing the possession of the plaintiff-petitioner in respect of Schedule 'Ka' and 'Kha' land for ends of justice.
- VIII. For that the trial court below rejected the prayer for ad-interim injunction of the plaintiff-petitioner by making a new case/third case completely out of blue which is absolutely malafide, biased and illegal. As such, the defendants-opposite parties may kindly be restrained by an order of ad-interim injunction from disturbing the possession of the plaintiff-petitioner in respect of Schedule 'Ka' and 'Kha' land for ends of justice.
- IX. For that the courts below have passed the impugned order on surmise and conjecture. Hence, the impugned order is bad in law and liable to be set aside.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to call for the records, issue a Rule, calling upon the defendants-opposite parties to show cause as to why the impugned

order No. 4 dated 23.06.2019 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 465 of 2019 rejecting the application of the plaintiff-petitioner filed under section 151 of the Code of Civil Procedure, 1908 for ad-interim injunction restraining the defendants-opposite parties from destroying/demolishing/dismantling the LPG Gas Plant and other establishment/structures in the Schedule 'Ka' land and/or closing/blocking the road-way of the plaintiff-petitioner using Schedule 'Kha' land or evicting the plaintiff-petitioner therefrom should not be set aside; and after hearing the parties, perusing the records and the cause shown, if any, make the Rule absolute, and/ or pass such other or further order or orders as your Lordships may deem fit and proper.

–AND–

Pending disposal of the Rule, be further pleased to restrain the defendants-opposite parties by an order of ad-interim injunction from destroying/demolishing/dismantling the LPG Gas Plant and other establishment/structures in the Schedule 'Ka' land and/or closing/blocking the road-way of the plaintiff-petitioner using Schedule 'Kha' land or evicting the plaintiff-petitioner therefrom for ends of justice.

And for this act of kindness, the petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Walir Rahman Masum, son of late Abdul Halim Sernibat, of Post and Village- Aghoiljhara, Police Station- Gournadi, district- Barishal, present address: 27/A-5, Dhakeshwari Road, Lalbagh, Dhaka-1211, Date of birth- 13 March 1961, by faith Muslim, by profession- Service, by Nationality-Bangladeshi, National ID No. 7323869458 do hereby solemnly affirm and say as follows :

1. That I am the *tadbirker* being the attorney of the petitioners of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate

Membership # _____

Hall Room No.2, Supreme
Court Bar Association Building

Mobile: _____

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

Sample

DISTRICT : DHAKA.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

CIVIL REVISION NO. OF 2018.

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil
Procedure, 1908.

(Against Judgment and Order)

AND

IN THE MATTER OF:

1. Md. Yunus Patwari,
2. Jafar Ahmmad Patwari
3. Saleh Ahmmad Patwari

Father of all: Haji Siddiqur Rahman Patwari, Shop
No. 45, 46, 47, Islam Manson Super Market, 391,
Elephant Road, Thana- New Market, Dhaka-1205.

.... Defendants-Petitioners.

–VERSUS–

1. S.M. Anisur Rahman, son of late Alhaj Md. Ismail, of House No. S E (E) 4B Road No. 139, Gulshan, Thana- Gulshan, Dhaka-1212.

.... Plaintiff-Opposite Party.

2. Md. Monirul Islam Patwari, son of Haji Siddiquir Rahman Patwari, Shop No. 45, 46, 47, Islam Manson Super Market, 391, Elephant Road, Thana- New Market, Dhaka-1205.

..Proforma-Opposite Party No. 1.**AND****IN THE MATTER OF :**

Judgment and order dated 20.09.2017 passed by the learned Additional District Judge, 2nd Court, Dhaka in Civil Revision No. 115 of 2017 dismissing the application and thereby affirming the judgment and order dated 2.05.2017 passed by the learned Senior Assistant Judge, 1st Court, Dhaka in Title Suit No. 182 of 2015 dismissing/rejecting the application under sections 10 read with 151 of the Code of Civil Procedure filed by the defendants-petitioners.

APPLICATION VALUED AT TK. 36,000/- ONLY
SUIT VALUED AT TK. 36,000/- ONLY

To

Mr. Justice Syed Mahmud Hossain the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioners most respectfully—

S H E W E T H :

1. That the plaintiff-opposite party No. 1 filed the Title Suit No. 182 of 2015 for evicting the defendants from the suit land alleging inter-alia that the defendants are the tenants in the suit land while the plaintiff is the owner of the suit land. Copy of the plaint is annexed hereto and marked as **Annexure- "A"**.
2. That the defendants contested the suit by filing written statement and denying all the material allegations against them. The defendants claimed themselves owners by way of purchase of possession of the suit land from the co-sharer of the land. Copy of the written statement is annexed hereto and marked as **Annexure- "B"**.

3. That during the pendency of the suit on 29.09.2016 the petitioners filed an application under sections 10 and 151 of the Code of Civil Procedure, 1908 for staying the further proceeding of the instant suit till disposal of the Title Suit Nos. 41 of 2014 and 351 of 2013. Against which the opposite party filed written objection on 15.11.2016. Copies o the application dated 29.09.2016 and written objection dated 15.11.2016 are annexed hereto and marked as **Annexure- “C and C-1”**.
4. That after hearing the parties and perusing the documents, the learned court below rejected the said application of the petitioners vides judgment dated 2.05.2017. Against the same, the petitioners filed Civil Revision No. 115 of 2017. Copy of the Civil Revision application is annexed hereto and marked as **Annexure- “D”**.
5. That after hearing the parties and perusing the documents, the learned Additional District Judge, 2nd Court, Dhaka dismissed the Civil Revision by judgment dated 20.09.2017. Copy of the order sheet are annexed hereto and marked as **Annexure- “E Series”**.
6. That it is stated that the said Title Suit Nos. 351 of 2013 and 41 of 2014 are still pending. Copies of the order sheet are annexed hereto and marked as **Annexure- “F Series”**.
7. That the said Title Suit No. 182 of 2015 is now pending for further hearing. The next date is fixed on 16.04.2018. The last order of the said suit is annexed hereto and marked as **Annexure- “G”**.
8. That it is submitted that the impugned judgment and order of the subordinate courts are bad in law as well as in facts; and the same are not maintainable in the eye of law at all. Hence, the impugned judgment and order of the subordinate courts are liable to be set aside.
9. That it is submitted that the learned court bellows committed error of law resulting in an error in taking decision occasioning failure of Justice in passing the impugned judgment and order; as such the same are liable to be set aside.
10. That it is submitted that the lower courts below failed to consider that the petitioners have already become absolute owners and possessors of the suit shop by executing a registered sale deed; and without deciding the title of the petitioners, the instant suit is not maintainable at all. Moreover, two other suits namely, Title Suit No. 351 of 2013 and Title Suit No. 41 of 2014 are pending before the learned Joint District Judge, 3rd Court, Dhaka wherein title of the parties shall be decided. In that situation, the trial court below ought to have returned the plaint to the Court of learned Joint District Judge, 3rd Court, Dhaka for its proper adjudication. Hence, the impugned judgment and order is liable to be set aside.
11. That it is submitted that the learned Additional District Judge while passing the impugned judgment very incorrectly relied on a case decided by the Hon’ble Appellate Division reported in 16 BLD (AD) 260 (*Md. Atiqullah Vs. Mrs. Sanawara Begum and others*) holding that *“once it is established that a person is a tenant he cannot be permitted during continuance of the tenancy to resist a suit for eviction by his landlord as a subsequent purchaser from a co-sharer without surrendering his possession to his landlord”* (underlines emphasized), because this aforesaid finding has no application to the present case of the petitioner. The facts and law points in both these cases are entirely different because in the instant case of the petitioner one title suit and other partition suit are pending

before the learned civil court between the same parties and other co-sharers and the trials of those suits are going on. On the other hand, in the aforesaid case reported in 16 BLD (AD) 260, no such title suit was pending regarding determination and declaration of title. But the lower courts below failed to appreciate this point of law and arrived at the error decision committing an error of law resulting in an error in passing the impugned judgment occasioning failure of justice; as such the impugned judgment is liable to be set aside for ends of justice.

12. That it is submitted that the petitioner filed an application under section 10 and 151 of the Code of Civil Procedure for staying the suit so that the instant suit can be properly and fairly adjudicated with the Title Suit No. 351 of 2013 along with Title Suit No. 41 of 2014 pending between the same parties and their co-sharers. The purposes are to avoid multiplicity of suits, contradictions amongst the findings of the Courts below and to ensure fair, concurrent, harmonious and proper adjudication in accordance with law. But the learned courts below failed to ascertain this point of law and very illegally and arbitrarily passed the impugned judgment, which is liable to be set aside for ends of justice.
13. That it is submitted that the learned Additional District Judge, miserably failed to ascertain this point of law that any finding of the learned courts below in this suit regarding the status of the petitioner shall frustrate the entire merit of the aforesaid title suits. It amounts to destruction of the purpose of regular trial in civil suits under the CPC by a summary trial, which cannot be tenable in the eye of law. As such, the learned Additional District Judge committed a serious error of law and fact on the face of record in passing the impugned judgment, which is liable to be set aside for ends of justice.
14. That it is submitted since there are 2 (two) civil suits pending before the civil court regarding the same suit property between the same parties and other co-sharers, therefore, the plaint of the instant suit is liable to returnable; but the learned courts below vehemently failed to appreciate this point of law, very illegally passed the impugned judgment going beyond the fact and very erroneously decided that the petitioner is a tenant without leaving any scope to decide the actual title of the suit property in the aforesaid title suits. As such, the impugned judgment is liable to be set aside for ends of justice.
15. That in view of the above facts and circumstances, the defendant-petitioner begs to move this application before this Hon'ble Court on the following amongst other-

-G R O U N D S-

- I. For that the impugned judgment and order of the subordinate courts are bad in law as well as in facts; and the same are not maintainable in the eye of law at all. Hence, the impugned judgment and order of the subordinate courts are liable to be set aside.
- II. For that the learned court bellows committed error of law resulting in an error in taking decision occasioning failure of Justice in passing the impugned judgment and order; as such the same are liable to be set aside.
- III. For that the lower courts below failed to consider that the petitioners have already become absolute owners and possessors of the suit shop by executing a registered sale deed; and without deciding the title of the petitioners, the instant suit is not maintainable at all.

Moreover, two other suits namely, Title Suit No. 351 of 2013 and Title Suit No. 41 of 2014 are pending before the learned Joint District Judge, 3rd Court, Dhaka wherein title of the parties shall be decided. In that situation, the trial court below ought to have returned the plaint to the Court of learned Joint District Judge, 3rd Court, Dhaka for its proper adjudication. Hence, the impugned judgment and order is liable to be set aside.

- IV. For that the learned Additional District Judge while passing the impugned judgment very incorrectly relied on a case decided by the Hon'ble Appellate Division reported in *16 BLD (AD) 260 (Md. Atiqullah Vs. Mrs. Sanawara Begum and others)* holding that "once it is established that a person is a tenant he cannot be permitted during continuance of the tenancy to resist a suit for eviction by his landlord as a subsequent purchaser from a co-sharer without surrendering his possession to his landlord" (underlines emphasized), because this aforesaid finding has no application to the present case of the petitioner. The facts and law points in both these cases are entirely different because in the instant case of the petitioner one title suit and other partition suit are pending before the learned civil court between the same parties and other co-sharers and the trials of those suits are going on. On the other hand, in the aforesaid case reported in 16 BLD (AD) 260, no such title suit was pending regarding determination and declaration of title. But the lower courts below failed to appreciate this point of law and arrived at the error decision committing an error of law resulting in an error in passing the impugned judgment occasioning failure of justice; as such the impugned judgment is liable to be set aside for ends of justice.
- V. For that the petitioner filed an application under section 10 and 151 of the Code of Civil Procedure for staying the suit so that the instant suit can be properly and fairly adjudicated with the Title Suit No. 351 of 2013 along with Title Suit No. 41 of 2014 pending between the same parties and their co-sharers. The purposes are to avoid multiplicity of suits, contradictions amongst the findings of the Courts below and to ensure fair, concurrent, harmonious and proper adjudication in accordance with law. But the learned courts below failed to ascertain this point of law and very illegally and arbitrarily passed the impugned judgment, which is liable to be set aside for ends of justice.
- VI. For that the learned Additional District Judge, miserably failed to ascertain this point of law that any finding of the learned courts below in this suit regarding the status of the petitioner shall frustrate the entire merit of the aforesaid title suits. It amounts to destruction of the purpose of regular trial in civil suits under the CPC by a summary trial, which cannot be tenable in the eye of law. As such, the learned Additional District Judge committed a serious error of law and fact on the face of record in passing the impugned judgment, which is liable to be set aside for ends of justice.
- VII. For since there are 2 (two) civil suits pending before the civil court regarding the same suit property between the same parties and other co-sharers, therefore, the plaint of the instant suit is liable to returnable; but the learned courts below vehemently failed to appreciate this point of law, very illegally passed the impugned judgment going beyond the fact and very erroneously decided that the petitioner is a tenant without leaving any scope to decide the actual title of the suit property in the aforesaid title suits. As such, the impugned judgment is liable to be set aside for ends of justice.

WHEREFORE, it is most humbly prayed that your Lordship would graciously be pleased to call for the records, issue a Rule calling upon the opposite party to show cause as to why the impugned judgment and order dated 20.09.2017 passed by the learned Additional District Judge, 2nd Court, Dhaka in Civil Revision No. 115 of 2017 dismissing the application and thereby affirming the judgment and order dated 2.05.2017 passed by the learned Senior Assistant Judge, 1st Court, Dhaka in Title Suit No. 182 of 2015 dismissing/rejecting the application under sections 10 read with 151 of the Code of Civil Procedure filed by the defendants-petitioners should not be set aside and after hearing the parties, perusing the records and the cause shown, if any, make the Rule absolute, and/ or pass such other or further order or orders as your lordships may deem fit and proper.

AND

Pending hearing of the Rule, be pleased to stay the further proceeding of Title Suit No. 182 of 2015 now pending before the learned Senior Assistant Judge, 1st Court, Dhaka in for ends of justice.

And for this act of kindness, the Defendants-petitioners are as in duty bound shall ever pray.

AFFIDAVIT

I, Md. Golam Mostafa, Son of Md. Abdul Mannan and Mst. Sakina, of House No. 44/J, Indira Road, Post Office: Tejgaon-1215, Tejgaon, Dhaka City Corporation, Dhaka aged about 35 years, by faith Muslim, by profession- service, by Nationality-Bangladeshi being National ID No. 2699040696079 do hereby solemnly affirm and say as follows :

01. That I am the *tadbirker* of this case being cousin-brother of the accused-petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

()

Advocate

Solemnly affirmed before me this theth
day of, 2018.

DEPONENT

The deponent is known to me and
identified by me.

()

Advocate

Membership No. 6731

Hall Room No. 2, Supreme Court Bar
Association, Shahbagh, Dhaka.

Mobile: 01717-041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

CHAPTER 12

GD, FIR, Complaint Petition

Any criminal allegation can be made through GD, FIR or complaint petition as prescribed by law. Where allegation must be made through filing complaint petition as provided by law, it cannot be filed by FIR. For example : allegation under Section 138 of the Negotiable Instruments Act, 1881 must be filed by a complaint petition, therefore lodging FIR or GD in this case will not work. Likewise, there are some other cases where statutes provide to file before the Tribunal, those cases cannot be filed otherwise. On the other hand, where cases are to be filed before the Police Station, the party should go to Police Station first for filling the case.

Generally, General Diary (GD) is lodged with the Police Station in petty issues where it is necessary to inform the Police but yet to convert into case. For example : Arif has lost his national identity card but he does not know whether it was stolen or who stole it. Arif can lodge a GD for recording the lost of his national id. Earlier, the party can go with a type copy or written copy of a GD and registered the same with Police Station. Sometimes, Police from the concerned Station also helped to write a GD where party cannot write. Police helped to write the version narrated by the party verbally. Now-a-days, there is a Form of GD in the Police Station. Party does not need to go with a type copy of written anything. Party can go to Police Station, collect a Form, fill-up the same and submit to the Police Station who may register it. It must be signed by the filling party. Upon registration, a number is given to it with a date of recording which is known as 'GD Entry No.dated.....'. A copy of the same is also given to the party who lodged it. Now-a-days, a phone number of the dealing Officer of Police is also given to the party for communication. Earlier, no such investigation took place against GD. Now, it becomes mandatory. The authorized Officer conducts investigation and prepares report on it. For that reason, GD is very important though it in itself does not create or provide any legal remedy. Nevertheless, it paves the way of getting further relief. Sometimes, it is a legal as well as practical requirement too for obtaining further legal assistance and remedy. For example : if someone has lost his national id, driver license, passport, student identity card or other documents but he is not sure about stealing or involvement of any offence, then it's very important for him to file GD, otherwise he may be refused to give duplicate/further copy by the concerned authority. GD to be filed in the nearest Police Station where the things were lost or facts occurred. GD is required by law as provided under Section 44¹ of the Police Act 1861,

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1. Section 44 of the Police Act, 1861 provides provision for "Police-officers to keep dairy" in the language that "it shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall from time to time, be prescribed by the Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined. The Magistrate of the district shall be at liberty to call for and inspect such diary."

Sections 154² and 155³ of the Code of Criminal Procedure, 1898 and Regulation 377⁴ of the Police Regulations, Bengal.

First Information Report (FIR) / ejahar is the most common way to lodge a criminal case. It is lodged with Police Station. Generally, it is lodged in the nearest Police Station where the offence is committed. Sections 154 and 155 of the Code of Criminal Procedure provide provision for lodging of FIR. In addition, the Police Act and the Police Regulation, Bengal also provide provisions relating to FIR. Party can lodge FIR with a type or written copy or can go to Police Station where Police can help to write it as per the verbal statement of the informant. The person who lodges FIR is called the informant/ejaharkari. It must be signed by the informant. It must be in clear and read-able language. It must be registered with case number and exact copy with the Police Station. The informant is given with a copy along with the case number and date on it which is known as “.....Police Station Case No.dated.....under Sections.....”. Name of Police Station, case number, date and time of lodging, date and time of occurrence, place of occurrence, details of the informant, details of the accused (if not unknown), description of occurrence, sections of the concerned Act, signature of the Police officer and signature of the informant must be clearly mentioned on FIR. It is registered in the prescribed Registry/Balam Book lying with the Police Station. Police can also file FIR on its own motion. Generally, FIR is

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2. Section 154 of the Code of Criminal Procedure, 1898 provides that “every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.”
 3. Section 155 of the Code of Criminal Procedure, 1898 provides that “(1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate. (2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or send the same for trial. (3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.”
 4. Regulation 377 of the Police Regulations, Bengal (PRB) provides that
 - “(a) The general diary as prescribed under section 44, Police Act, 1861, and sections 154 and 155, Code of Criminal Procedure, shall be kept in B. P. Form No. 65 at all police-stations. The officer in charge is responsible that it is punctually and correctly written. He shall himself make all but the routine entries. The diary shall be written in duplicate with carbon paper. Each book shall contain 200 pages, duly numbered.
 - (b) Every occurrence which may be brought to the knowledge of the officers of police shall be entered in the diary at the time at which it is communicated to the station, and if no incident be communicated during the day, this fact shall be noted in the diary before it is closed and despatched.
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 - (k) The diary shall also be maintained at each outpost and be written by the officer in charge with carbon paper. In addition to entries concerning patrol work, the diary shall contain information regarding important matters coming to notice and the presence of suspicious characters, gamblers, swindlers, foreigners or members of wandering gangs. Cases that may be reported to such outpost shall also be recorded but no details need be given except a statement on the following lines: —A. B. came to the outpost at 08-00, and reported a burglary in his house last night. The complainant is sent with constables X. Y. to the police-station. The diary shall be submitted daily to the officer in charge of the parent police-station where it shall be perused and filed after necessary action has been taken. If these diaries are written in Hindi, officers in charge of police-stations will have them read out to them by one of their up-country constables.

lodged in case of cognizable offences where Police can proceed for investigation without any order from the Court. In case of non-cognizable offence Police can take information but cannot proceed for investigation without any order from the Court.

Complaint petition is filed by a complainant before the Magistrate under Section 200⁵ of the Code of Criminal Procedure. It must be filed before the Magistrate having jurisdiction to take cognizance into. It is to be filed in writing with signature of the complainant either through Advocate or otherwise. Oath is mandatory for taking cognizance. If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.⁶ If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.⁷

Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint: Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the provisions of section 200 have been complied with: Provided further that where it appears to the Magistrate that the offence complained of is triable exclusively by a Court of Session, the Magistrate may postpone the issue of process for compelling the attendance of the person complained against and may make or cause to be made an inquiry or investigation as mentioned in this sub-section for the purpose of ascertaining the truth or falsehood of the complaint.⁸

If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.⁹ Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is

5. Section 200 provides provision for examination of complainant in the following—

“A Magistrate taking cognizance of an offence on complaint shall at once examine upon oath the complainant and such of the witnesses present, if any, as he may consider necessary, and the substance of the examination shall be reduced to writing and shall be signed by the complainant or witness so examined, and also by the Magistrate:

Provided as follows—

- (a) when the complaint is made in writing, nothing herein contained shall be deemed to require such examination before transferring the case under section 192;
- (aa) when the complaint is made in writing nothing herein contained shall be deemed to require such examination in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;
- (c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant and witness if any, the Magistrate to whom it is so transferred shall not be bound to re-examine them.”

6. Section 201(1) of the Code of Criminal Procedure, 1898.

7. Section 201(2), *ibid.*

8. Section 202(1), *Ibid.*

9. Section 202(2), *Ibid.*

triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.¹⁰ Where the police submits the final report, the Magistrate shall be competent to accept such report and discharge the accused.¹¹

The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under section 202; there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing.¹²

Sample

তারিখ: ০১/০৫/২০১৯ ইং।

বরাবর
ভারপ্রাপ্ত কর্মকর্তা
বংশাল থানা
ঢাকা মেট্রোপলিটন পুলিশ
ঢাকা-১১০০।

বিষয় : সাধারণ ডায়েরিভুক্ত করার আবেদন।

প্রিয় মহোদয়,

আপনার সদয় দৃষ্টি আকর্ষণ পূর্বক জানানো যাচ্ছে যে, আমি আব্দুল জাব্বার মিয়া, পিতা- মৃত আফতাব উদ্দিন মিয়া, চেয়ারম্যান ও ব্যবস্থাপনা পরিচালক, লিনা গ্রুপ অব ইন্ডাস্ট্রিজ, ঠিকানা- হাজী আব্দুল আউয়াল ম্যানশন, ২১ হাজী আব্দুর রশিদ লেন, নয়াবাজার, ঢাকা-১১০০, দীর্ঘ প্রায় ৪৫-৫০ বছর যাবৎ ট্রেডিং ও শিল্প কারখানার ব্যবসা সফলভাবে পরিচালনা করে আসছি। দীর্ঘদিন যাবত আমি একটি জীপ গাড়ি যার রেজিস্ট্রেশন নং- ঢাকা মেট্রো ঘ ১১ ৮২৬৩ ব্যবহার করে আসছি। উক্ত গাড়ির যাবতীয় কাগজপত্র up-to-date অর্থাৎ নবায়ন করা রয়েছে। কিন্তু গত ২০/০৪/২০১৯ইং তারিখে আমার উল্লেখিত গাড়ির ব্লু বুকটি হারিয়ে গেছে। ব্লু বুকটি হারিয়ে যাওয়ায় বর্তমানে গাড়িটি আমার কাজে ব্যবহার করতে পারছি না। যার ফলশ্রুতিতে আমার ব্যক্তিগত ও অফিসিয়াল অনেক গুরুত্বপূর্ণ কাজ নির্দিষ্ট সময়ে সম্পাদন করা সম্ভব হচ্ছে না যা আমাকে বিভিন্নভাবে ক্ষতিগ্রস্ত করছে। বিষয়টি আপনাকে অবহিত করার নিমিত্তে অত্র সাধারণ ডায়েরি দায়ের করা হলো।

বিনীত নিবেদক,

(আব্দুল জাব্বার মিয়া)
চেয়ারম্যান ও ব্যবস্থাপনা পরিচালক
লিনা গ্রুপ অব ইন্ডাস্ট্রিজ
ঠিকানা- হাজী আব্দুল আউয়াল ম্যানশন,
২১ হাজী আব্দুর রশিদ লেন, নয়াবাজার, ঢাকা-১১০০।

10. Section 202(2A), Ibid.

11. Section 202(2B), Ibid.

12. Section 203, Ibid.

Sample

তারিখ :

বরাবর

ভারপ্রাপ্ত কর্মকর্তা

মোহাম্মদপুর থানা

ডিএমপি, ঢাকা-১২০৭।

বিষয় : সাধারণ ডায়েরি প্রসঙ্গে।

জনাব,

যথাযথ সম্মান পূর্বক আমি পলাশ আহমেদ, পিতা- জৈমুদ্দিন আহমেদ, স্থায়ী ও বর্তমান ঠিকানা : বাসা নং-৩/৪, ব্লক-সি, লালমাটিয়া, এপার্টমেন্ট নং-এন-৬, মোহাম্মদপুর, ঢাকা-১২০৭ আপনার থানায় উপস্থিত হয়ে এই মর্মে সাধারণ ডায়েরি দাখিল করছি যে, আমি আমার বর্তমানে অবস্থিত এপার্টমেন্টটি ক্রয়সূত্রে মালিক যা জাতীয় গৃহায়ণ কর্তৃপক্ষ কর্তৃক আমার নামে স্মারক নং-এপি-৪/৬৮/৭৯৬২ তারিখ : ২৫/০৯/২০০০ইং এর দ্বারা নামজারীকৃত। উক্ত এপার্টমেন্টে আমি আমার পরিবারসহ বিগত ১৬ বৎসর যাবত বসবাস কও আসছি। বিগত ২৯/১০/২০০০ইং তারিখে আমি আমার উক্ত এপার্টমেন্ট সংক্রান্ত কতিপয় কার্যাবলি সম্পাদন করার নিমিত্তে জনাব নাসির উদ্দিন বিশ্বাস, পিতা- মৃত ইদ্রিস আলী বিশ্বাস, ঠিকানা : বাসা নং- ৪০, রোড নং- ১২৩, গুলশান-১, ঢাকা কে আম-মোক্তার নিযুক্ত করে একটি রেজিঃকৃত আম-মোক্তারনামা সম্পাদন করি যার দলিল নং- ৪৪১৮ তারিখঃ ২৯/১০/২০০০ইং। পরবর্তীতে উক্ত আম-মোক্তারনামা দলিলের কোন প্রয়োজনীয়তা না থাকায় আমি বিগত ১৩/০৩/২০১৫ ইং তারিখে উক্ত আম-মোক্তারনামা দলিলটি আইন অনুযায়ী বাতিল করে একটি রেজিঃকৃত আম-মোক্তারনামা রদ ও রহিতকরণ দলিল সম্পাদন করি যার নং- ২৩১৩ তারিখঃ ১৩/০৪/২০১৫ইং। ইদানিং আমি কতিপয় সূত্রে জানতে পেরেছি যে, জনাব নাসির উদ্দিন বিশ্বাস অবৈধভাবে আমার এপার্টমেন্টটি মোহাম্মদ ফারুক হোসেনকে বিক্রি করে দিয়েছে এবং ইতিমধ্যে বিগত ২৯/০৫/২০১৬ইং তারিখে সন্ধ্যা ৭.৩০ ঘটিকায় নাসির হোসেন বিশ্বাসের প্রত্যক্ষ মদদ ও নির্দেশনায় কিছু দুষ্ট প্রকৃতির সন্ত্রাসী লোকজন আমার উক্ত এপার্টমেন্টে এসে বিভিন্ন ধরনের ভয়ভীতি প্রদর্শনস্বরূপ জোড়পূর্বক উচ্ছেদের হুমকি দিয়েছে। এমতাবস্থায়, আমি এবং আমার পরিবার খুবই ভীত-সন্ত্রস্ত। বিষয়টি আপনাকে অবহিত করা হলো।

বিনীত নিবেদক,

(পলাশ আহমেদ)

পিতা- জৈমুদ্দিন আহমেদ

স্থায়ী ও বর্তমান ঠিকানা : বাসা নং-৩/৪

ব্লক-সি, লালমাটিয়া, এপার্টমেন্ট নং-এন-৬

মোহাম্মদপুর, ঢাকা-১২০৭।

মোবাইল : ০১৯১৯-৫৩০২৪১

Sample**IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, DHAKA.****C. R. CASE NO. _____ OF 2020.****Complaint Petition under Section 138 of the Negotiable Instruments Act, 1881 (As amended till date)****IN THE MATTER OF****LankaBangla Finance Limited**Head Office at Safura Tower (Level-11), 20,Kemal Ataturk Avenue, Banani, Dhaka-1213, Bangladesh.**Represented by its Authorized Officer**

Md. Harun-Ar-Rashid

S/O. Md. Ajahar Mollah, Business Support Officer,
Legal Affairs Division......**Complainant.****–VERSUS–****1. Md. Mostofa Amzad**

Son of Md. Abdul Lotif Biswas

Proprietor of M/S. Nofor Traders

House# Andul Baria Bazar, Jibon Nogor

Chuadanga, Chuadanga 7222.

.....**Accused Person.****Witnesses :**

1. Complainant himself;

DATE OF OCCURRENCE :

13.01.2020

PLACE OF OCCURRENCE :**STANDARD CHARTERED BANK LTD.**Banani Branch,14, Kemal Ataturk Avenue,Police Station- Banani,Dhaka Metropolitan Area, Dhaka-1212.**Summary of the Case :**Cheque being No. $\frac{CB}{CD}$ 4466928 dated 25.11.2019Cheque Amount : Tk. 4,479,000.00/- (Taka Forty
Four Lac Seventy Nine Thousand) Only.

Date of Dishonor : 13.01.2020

Date of Legal Notice : 11.02.2020

Date of A/D Return : 18.02.2020

The Complainant petitioner above named most respectfully states as follows :

1. That LankaBangla Finance Limited is a Financial Institution duly incorporated under the Companies Act, 1994 and regulated under the Financial Institutions Act, 1993, having its Head Office at Safura Tower (Level-11), 20, Kemal Ataturk Avenue, Banani, Dhaka-1213, Bangladesh and carries on business of providing financial services with sublime reputation from its very inception.
2. That the accused **Md. Mostofa Amzad**, Son of Md. Abdul Lotif Biswas, Proprietor of M/S. Nofor Traders, Village-Andul Baria Bazar, Jibon Nogar, Chuadanga, Chuadanga 7222, has availed different credit facilities from the complainant Financial Institution. The addresses of the accused as stated in the cause title are correct and last known addresses to the best of the knowledge and belief of the complainant.
3. That the accused person is the beneficiaries of the loan facility availed from the complainant and thereby he enjoyed the said facility fully and finally. But regrettably, the accused failed to repay the availed credit facilities. Thereafter, upon repeated persuasion from the part of the Complainant, the accused as part payment of his outstanding dues issued a Cheque being No. $\frac{CB}{CD}$ 4466928 dated 25.11.2019 for an amount Tk. 4,479,000.00/- (Taka Forty Four Lac Seventy Nine Thousand) only drawn on account no. 1401589928001 of the accused, maintained with City Bank Limited, payable at any branch in Bangladesh.
4. That as accordingly, the Complainant Financial Institution presented the said cheque for encashment in Standard Chartered Bank Limited, Banani Branch having its address at 14, Kemal Ataturk Avenue, Police Station-Banani, Dhaka Metropolitan Area, Dhaka-1212 on 13.01.2020 but the same has been dishonored due to **“Insufficient Fund”** on same date i.e. on 13.01.2020.
5. That thereafter, the complainant informed the accused about the dishonor and requested him to make the dishonored amount. But regrettably, despite repeated persuasion and all out co-operation by the Complainant, the accused did not pay the amount of above mentioned dishonored cheque to the Complainant.
6. That thereafter, in compliance with Section 138 of the Negotiable Instruments Act, 1881 (as amended up to date), the complainant Financial Institution through its nominated learned lawyer served legal notice on 11.02.2020 via registered post with A/D to the accused at his last known addressees which was duly received by him on 18.02.2020. In the said notice the Complainant requested the accused to pay the amount of cheque within 30 (thirty) days of receipt of the legal notice and also mentioned that in default, proceeding under Negotiable Instruments Act shall be filed against them. But regrettably the accused did not make the payment.
7. That dishonor of cheque on the ground of **“Insufficient Fund”** constitutes a criminal offence and since the cheque was issued by the accused and has been dishonored due to **“Insufficient Fund”**, the accused is liable to be punished under Section 138 of the Negotiable Instruments Act, 1881 (as amended up to date).

8. That the instant cheque was issued to discharge liability of the Accused owed to the Complainant Financial Institution situated in Dhaka and accordingly the Complainant presented the same for encashment at Standard Chartered Bank, Banani Branch, having its address at 14, Kemal Ataturk Avenue, Police Station-Banani, Dhaka Metropolitan Area, Dhaka-1212 and which was ultimately returned unpaid by the collecting Bank in Dhaka followed by issuance of Dishonor memo from the Drawee Bank in Dhaka. The Complainant Bank also served legal notice dated 11.02.2020 in compliance with Section 138 of the Negotiable Instruments Act 1881 (as amended up to date), through its lawyer from Dhaka. Hence the place of occurrence is within jurisdiction of this learned Court.
9. That the cause of action to file the case arose on 25.11.2019, when the cheque was issued by the Accused, on 13.01.2020 when the said cheque was presented to the Bank for encashment by the Complainant and dishonored for **“Insufficient Fund”**, on 11.02.2020 when the legal notice was served under Section 138 of the Negotiable Instruments Act 1881 (as amended up to date) through registered post with A/D to the accused at his last known addresses, thereafter, on date when the accused received the legal notice and did not make the payment and the said cause of action is still continuing.
10. That in view of the facts and circumstances stated above, this court may take cognizance in accordance with Section 141 of the Negotiable Instruments Act, 1881 and the accused should be brought to justice as provided under Section 138 of the Negotiable Instruments Act, 1881.

Wherefore, it is most humbly prayed that the Hon’ble Court may graciously be pleased to take cognizance under Section 141 read with Section 138 of the Negotiable Instruments Act, 1881, and secure immediate arrest of the accused and upon holding trial, punish the accused with imprisonment for a period of one year and also with fine thrice the amount of the cheque and/or pass such other or further order or orders, as this Court may deem fit and proper.

And for this act of kindness the complainant as in duty bound shall ever pray.

Sample

FIR.....

CHAPTER 13

Criminal Appeal, Revision or other Miscellaneous Applications

This Chapter provides samples of various applications which are frequently used in criminal law practice. It provides examples of criminal appeal against judgment/order, application for bail in pending appeal, application for anticipatory bail or regular bail under Section 498 of the Code of Criminal Procedure, application for transfer of case, application for bail under Section 426, application under Section 344, criminal revision and some others.

Section 344

Section 344 of the Code of Criminal Procedure is the section which deals with the power of a court to postpone or adjourn proceedings in criminal cases. Nowhere does that provide for an indefinite adjournment of a case. An adjournment sine die means an indefinite adjournment. The policy of the criminal law is to bring persons accused to justice as speedily as possible so that if they are found guilty they may be punished and if they are found innocent they may be acquitted and discharged.¹ Though the section does not use the word “stay” the same principle of law is applicable in the case of stay also of a criminal proceeding. No stay may be granted sine die or for an indefinite period.²

It is well settled principle that the Court can exercise its discretion under section 344 of the Code of Criminal Procedure when any other proceeding between the same parties regarding the same disputes is pending before any Court of the country, but there is nothing to show that there is any other proceeding pending before any Court between the same petitioner regarding the same subject matter.³ In the case of *AB Siddiquir Rahman vs AM Harunur Rashid* reported in 3 BLT (AD) 64, their Lordships observed that the principle governing stay of proceedings is that the criminal matter should be given precedence over the Civil Case.⁴

Section 426

Section 426 reads out as follows—

- (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.
- (2) The power conferred by this section on an Appellate Court may be exercised also by the High Court Division in the case of any appeal by a convicted person to a Court subordinate thereto.

1. *Emperor Vs. Md. Ebrahim and others* [1942] AIR Cal. 219.
2. *Rafique Ahmed v Badiul Alam* [1984] 4 BLD HCD 319.
3. *Moudud Ahmed v The State and others* [2017] 69 DLR 428.
4. *Zafar Ahmed v Mir Iftekharuddin and another* [2009] 61 DLR 732.

- (2A) When any person is sentenced to imprisonment for a term not exceeding one year by a Court, and an appeal lies from that sentence, the Court may, if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.
- (2B) Where High Court Division is satisfied that a convicted person has been granted special leave to appeal to the Appellate Division of the Supreme Court against any sentence which it has imposed or maintained, it may if it so thinks fit order that pending the appeal the sentence or order appealed against be suspended, and also, if the said person is in confinement, that he be released on bail.
- (3) When the appellant is ultimately sentenced to imprisonment, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.”

[Underline supplied]

Sections 496 – 502 and Section 426 of the Code provides legal scope relating to bail mostly in our country. As stated earlier Sections 496 – 502 provide general principles and jurisdiction relating to granting bail in pending cases (i.e. trial stage) before judgment. Section 426 deals with suspension of sentence during pendency of appeal and thereby release of the convicted appellant on bail.

Section 426 gives scope for bail after judgment when the case is pending in appeal. Appeals are the natural and frequent continuation of the criminal trial process.⁵ In truth, the scheme of Chapter XXXIX is that Sections 496 and 497 provide for the granting of bail to accused persons before trial, and the other Sections of the chapter deal with matters ancillary or subsidiary to that provision.⁶ The only provision in the Code which refers to the grant of bail to a convicted person is to be found in Section 426.⁷

The words “pending any appeal by a convicted person” do not create any distinction between the convicted-appellant with death sentence/life imprisonment and other convicted-appellants with any other sentences of any term; therefore there is no scope to hold that Section 426 does not apply to the death penalized or life sentenced convict. Appeal against death penalty is directly made to the High Court Division who enjoys ample jurisdiction to grant bail or not. Nowhere in any law of Bangladesh provides any specific bar upon granting bail to the death penalized appellant by the High Court Division, but while we go to the Court praying to exercise the jurisdiction, the Court always shows its reluctance though the Court has shown bravery and bold steps on several critical moments of the country. However, if we look into the instances of our neighboring countries including India and Pakistan, we find positive instances on this issue.

In addition to the above, “sentence or order appealed against be suspended” is particularly relevant. Appeal is a matter of right, and once appeal is filed, the appeal court may pass order

5. *Vickery v Nova Scotia Supreme Court (Prothonotary)* [1991] SCC 90, [1991] 1 SCR 671.

6. *Lala Jaim Das and others* [1945] 72 I.A. 120

7. *K.M. Jahangir Alam v The State* [1998] 18 BLD HCD 680.

suspending the execution of the order or sentence against which the appeal has been preferred. Whether mere tender of appeal and putting an appeal (registration) number on it would automatically suspend the operation of the sentence or order, which is not a matter of debate anymore.⁸ There must be an order of the appellate court admitting the appeal and staying the realization of fine. Admission of appeal puts the sentence or order appeal against under suspension. Till final disposal of the appeal, death penalty does not seem to be executed no matter whether the convict-appellant was enlarged on bail or there is any specific suspension or stay order upon execution of sentence or not. Since appeal is the original continuation of trial, therefore it puts the execution of death sentence under abeyance till finality of the appeal.⁹

The word “suspension” has not been defined in the Code. Suspension is defined under service laws or labor laws, but that definition does not apply here. The word “suspension” as used in this Code is different from the word “suspension” used in civil matter or service matter or constitutional issues. In fact, when a sentence is suspended, no fruitful purpose would be served by continuing to detain the convict, whose sentence, upon appeal being preferred against conviction, has been suspended by Court. Conversely, if a convict is allowed to go on bail without suspending his sentence, the sentence of imprisonment would continue to run. For instance, if a convict is sentenced to imprisonment, simple or rigorous, for a period of one year and he is allowed to go on bail without suspending his sentence and if he remains on bail for a period of one year, his sentence of imprisonment would be over, though he may not have, in actual terms, served the sentence of imprisonment.¹⁰¹¹

In the case of *Gomti vs. Thakurdas and others*,¹² the Supreme Court of India succinctly drew a distinction between bail and suspension and observed that Section 389 Cr.P.C. deals with suspension of execution of sentence pending appeal and release of the appellant on bail. There is distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 Cr.P.C. is the requirement for the appellate Court to record reasons, in writing, for ordering suspension of execution of the sentence or order appealed against. If a convicted person is in

8. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the applicant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the Appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said Court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine. The mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not per se warrant suspension of execution of sentence and grant of bail. What really necessary is to consider whether reasons exist to suspend execution of the sentence and grant of bail. [*Hasmat Rai v. Raghunath Prasad* [1981] AIR SC 1711, [1981] 3 SCC 103, [1981] 3 SCR 605, [1981] MPLJ 610].

9. *Gomti v Thakurdas and others* [2007] 11 SCC 160, [2007] 3 PLJR (SC) 44, *Chandra Shekhar Bharti v The State of Bihar* [2014] CriLJ 2953, [2014] 2 PLJR 756, Hussain Muhammad Ershad, son of Late Moqbul Hossain, House No. 8, Road No. 62, Gulshan, Dhaka vs. *Abdul Muqtadir Chowdhury*, Additional Secretary, Bangladesh Parliament Secretariat, Law Division-2, Sangshad Bhaban, Dhaka and another, [2001] 53 DLR HCD 569 [2002] 10 BLT HCD 148, [2006] 26 BLD HCD 261.

10. *Chandra Shekhar Bharti v The State of Bihar* [2014] CriLJ 2953, [2014] 2 PLJR 756.

11. Please see the Appendix for full judgment of this case.

12. [2007] 2 Crimes 243 SC, [2007] CriLJ 2431, [2007] 11 SCC 160, [2007] 5 SCR 90, [2007] 2 ACR SC 2261.

confinement, the Court can direct that he be released on bail or on his own bond pending decision on his appeal. The requirement of recording reasons, in writing, clearly indicates that there has to be careful consideration of the relevant aspects and the order, directing suspension of sentence and grant of bail, should not be passed as a matter of routine. The Appellate Court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail.

Suspension and bail in pending appeal

When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended, every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.¹³

However, the mere fact, that during the trial, the appellant was on bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance, when, upon completion of trial, an accused person is found guilty, convicted accordingly and sentence is passed thereon. In other words, the mere fact that during the period, when an accused person was on bail during trial, there was no misuse of liberty, does not per se warrant suspension of execution of sentence and grant of bail. What really is necessary to be considered by the Court is whether reasons exist to suspend execution of sentence and, thereafter, grant of bail. It is, thus, merit of the conviction, which is examined albeit tentatively and until final hearing and decision on appeal.¹⁴

Whether principles governing bail in pending case or pending appeal are different or same – this question was raised in *Shamsul Hoque Pramanik and others v State*,¹⁵ wherein the Court held that—

“If is firstly contended by the learned Advocates for the appellants-petitioners that as they have been convicted and sentenced under Section 148 of the Penal Code which is a bailable section of offence, they should be enlarged on bail as a matter of right till disposal of the Criminal Appeal of this Court. In support of this contention, a decision in the case of *Hata and others v. The State*¹⁶ has been cited. In the said decision 15 DLR

13. *Bhagwan Rama Shinde Gosai and others v State of Gujarat* [1999] AIR SC 1859, [1999] 39 ACC 302, [1999] 4 SCC 421.

14. *Chandra Shekhar Bharti v The State of Bihar* [2014] CriLJ 2953, [2014] 2 PLJR 756.

15. [1989] 9 BLD HCD 520.

16. [1968] 20 DLR WP Lahore 7, [1967] PLD Lahore 1302.

(SC) 429 - PLD 1963 (SC) 478 has been relied on. It is not disputed that this application for bail of the appellants-petitioners was filed under Section 426(1) of the Code of Criminal Procedure after their conviction and sentence on trial and not under Section 496 of the Code before conclusion of the trial. In order to consider and appreciate the above submission of the learned Advocate for the petitioners it is better to have a look into the provisions for bail under Sections 426(1) and 496 of the Code of Criminal Procedure. Section 496 of the Code of Criminal Procedure is meant for bail to the under-trial prisoners in bailable offence which reads as follows—

When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an order in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such persons shall be released on bail.

And the provisions for bail after filing an appeal by a convict have been made in Section 426(1) of the Code of Criminal Procedure

Now, from a plain reading of these two Sections, it appears that in case of a bailable offence committed by under trial prisoners, the word 'shall' has been used in Section 496 Cr.P.C., that means the accused persons in such cases are entitled to bail as of right. But in case of bail under Section 426(1) Cr.P.C. to a convict the word 'may' has been used intending thereby that a convict cannot be released on bail as of right. It is the absolute discretion of the Court to either refuse or grant bail to the appellate Court must be exercised judicially and not arbitrarily or perversely in the facts and circumstances of each case. In the case cited above, one Hata and 7 others were convicted under Sections 148, 323 and 325 read with Section 149 of the Penal Code and were awarded various terms of imprisonment. The convicts took an appeal to the High Court and then an application for bail under Section 426(1), Cr.P.C. was filed. The application gave rise to an important question as to whether a person convicted of a bailable offence was entitled to bail as a matter of right. It was held in that decision that—

“An appeal is not a new trial, but is a continuation of the trial already held or a part of the trial of an offence undertaken by the Court of the first instance. Hence an appellate Court has power to pass such order or inflict a sentence which was within the power of the original Court who tried the case. As such the provisions as contained in Section 496, Cr. P.C., shall apply to the case of a person convicted of bailable offence.

The use of the word 'May' in this subsection makes it obligatory for the accused to apply to the Court of the original Jurisdiction, for the exercise of this discretion. The word 'may' is only used to cover such cases, otherwise the word 'may' used in this subsection has the meaning of 'shall' or 'must'.....

A person convicted of a bailable offence and who has filed an appeal against his conviction and sentence is entitled to bail as a matter of right.”

Now if this decision is followed, then the submission made by the learned Advocates for the petitioners has much force and the present appellants-petitioners should be enlarged on bail as of right. But on perusal of the aforesaid relevant portions of the two Sections of the Code of Criminal Procedure, I would like to respectfully differ with the decision cited above. The two Sections, namely, 426 and 496 of the Code of Criminal Procedure are quite distinct rather different from each other one with regard to the matter for bail during the trial of the accused and the other with regard to the same during the pendency of the appeal of a convict. In one, the word 'shall' which is obligatory and in the other, the word 'may' which is optional or discretionary have been used, the provisions of section 426 are independent and not controlled by the provisions of Section 496. In this view of mine, I am supported by a decision of the Pakistan Supreme Court in the case of *State v. Shah Sawar* at page 422¹⁷. By this decision the earlier decision on the point reported in PLD 1967 Lahore 1302 = 20 DLR (WP) Lahore 7¹⁸ has been overruled and it has been held that—

There can be no such general rule that a person convicted of a bailable offence is entitled as of right to be enlarged on bail during the pendency of his appeal against his conviction. Bail is always in the discretion of the Court and this discretion has of necessity, therefore, to be exercised upon the facts and circumstances of each case according to sound judicial principles.....

The power under Section 426 of the Code of Criminal Procedure is not as already pointed out by this Court in the case of *Khalid Saigol v. The State*¹⁹ controlled by the provisions of Section 496 and 497, Cr.P.C. although the principles therein indicated, will have to be borne in mind in granting or refusing bail.

Therefore, I find no substance in the first contention of the learned Advocate for the petitioners and I firmly hold that it is absolutely the discretion of the Appellate Court either to refuse or grant bail to a convict who cannot claim bail as a matter of right even in a bailable offence.”

[Underline supplied]

Same principles of bail in appeal - a continuation of trial

Appeal is a continuation of original trial,²⁰ as it is established that appeal can be filed as of right subject to limitation period provided under law. An appeal is not a new trial, but is a continuation of the trial already held or a part of the trial of an offence undertaken by the Court of the first instance.²¹ However, in conducting the appeal, the convict appellant is entitled to enjoy the advantage of treating her/his appeal as continuation of trial, notwithstanding her/his status of

17. [1969] Pakistan Criminal Law Journal 422.

18. 20 DLR WP Lahore 7

19. [1962] PLD SC 495.

20. *Muhammad Anwar v The State* [1972] P.Cr.L.J. 862, *Ayaz Ali v The State* [1962] PLD Dacca 223, *Queen v Jabanullah* ILR 23 Cal. 975, *Balli Reddy v Emperor* [1914] Mad. 258, *Ranjit Singh v State* [1952] Him. Pra. 81, *Sagnata Investment Ltd. v Norwich Corporation* [1971] 2 QB 380, *Drover v Ragman* [1951] 1 KB 380, *Key v. Pilgrim* [1870] LR 6 QB 8.

21. *Shamsul Hoque Pramanik and others v State* [1989] 9 BLD HCD 520.

remaining a convicted person from the perspective of presumption. Thus, appeal, as the continuation of the trial, would not ipso facto bear the notion of remaining innocent until disposal of appeal.²² In this sub-continent a criminal appeal is treated as a continuation of the original trial and a judgment is not treated as final till the matter has been heard and decided by an appellate Court, where such an appeal is provided. Under the Code of Criminal Procedure, finality does not attach to a judgment till the appeal is heard.²³

An analogy can be drawn that for anticipatory bail or if during pendency of trial an accused alleging with offence of murder or any other offence, punishment of which attracts death penalty can be considered for bail as discussed earlier; therefore during the pendency of appeal though death penalty or life imprisonment has been given, still the convict-appellant can be considered for bail on reasonable grounds if the court thinks fit. There is no legal bar upon it. The jurisdiction of the court is not barred in anyway. It is to be noticed that when an accused obtained bail in murder case or any case attracting death penalty life imprisonment and he/she continues the full trial without any mis-use of the privilege of bail and there is not disobey on his/her part of the Court's order or proceeding, then it is reasonably expected that he will not mis-use the conditions of bail if he/she enlarged on bail during appeal stage irrespective of the term of sentence, be it death or life imprisonment or any other rigorous one. At least, he deserves a fair chance to abide by law and enjoy the privilege of bail due to his/her good conduct.

In *Angana and another v State of Rajasthan*,^{24,25} the Supreme Court of India drawing the aforesaid analogy held that "in the instant case, an application under Section 389 Cr.P.C. is filed for suspension of sentence by a convict in a pending appeal. The accused was on bail when the matter was pending before the Sessions Court. It is not the case of the prosecution that the accused who is released on bail would abscond during the pendency of the appeal."

The Court further held that "when an appeal is preferred against conviction in the High Court, the Court has ample power and discretion to suspend the sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case. While considering the suspension of sentence, each case is to be considered on the basis of nature of the offence, manner in which occurrence had taken place, whether in any manner bail granted earlier had been misused. In fact, there is no strait-jacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discretion while considering the application filed by the convict under Section 389 of Criminal Procedure Code."²⁶

In the above cases, it has been observed that once a person has been convicted, normally, an appellate Court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter; it is open to the appellate Court to suspend the sentence in a given case by recording reasons. But it is well settled in India now, as observed in *Vijay Kumar* that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302,

22. *Mamun (Md.) v State* [2018] 70 DLR HCD 148.

23. *Nur Ellahi v The State* [1983] PLD Lahore 126.

24. [2009] 3 SCC 767, [2009] AIR SC 1669, [2009] 1 ACR 833 (SC).

25. Please see the Appendix for the full judgment of the case.

26. *Angana And Another v State of Rajasthan* [2009] 3 SCC 767, [2009] AIR SC 1669, [2009] 1 ACR 833 (SC).

IPC,²⁷ the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.²⁸

Section 496 – 498

The Scope of granting bail under section 496, 497 and 498 of the Code came up for consideration before Pakistan Supreme Court in *Muhammad Ayub Versus Muhammad Yaqub and state*, 19 DLR (SC) 38. The off quoted observation of Pakistan Supreme Court is couched in the following Language—

“Under section 496 and 497, Criminal Procedure Code, the Court can bail out a person only, if he has been placed under actual custody or appears in answer to a process issued or is brought before the Court, presumably by the police, or by some other arresting authority. In other words, these sections apply where there has been an actual arrest attracting the Court’s jurisdiction or the Court is seized of the proceedings directly, in which bail is requested. Section 498, however, would be called in aid, before the Court of Session and the High Court even where the Court is not seized directly of the proceedings in question and where no actual arrest has been made so far but anticipatory bail is asked for e.g. where the case is still at a stage of investigation by the police or a pending in a Subordinate Court. The power to grant such anticipatory bail would thus be confined to the High Court and the Court of Session and other Court would be excluded from its scope.”

Bail defined

Bail is not defined under any statute of Bangladesh. Bail is not defined under the Code and the dictionary as well as the Law Lexicon defines the same as security for the appearance of prisoner on giving which the accused is released pending trial or investigation.²⁹ The dictionary meaning of the word ‘bail’, is to set free or liberate a person arrested or imprisoned on taking security for his appearance.³⁰

The word “bail” is derived from the old French verb “Baillier” which means “to give or deliver”. The word is, also, related to Latin word “Bajulare” meaning “to bear a burden”. “Bail” stated in Wharton’s Law Lexicon is “to set at liberty a person arrested or imprisoned on security being taken for his appearance on a day and at a place certain, which security is bail.”³¹

27. Indian Penal Code 1860.

28. *Sidhartha Vashisht @ Manu Sharma v State (NCT of Delhi)* [2008] Cr.L.J. 3524 (popularly known as Jessica Lal’s under case).

29. *Govind Prasad v The State of West Bengal* [1975] 79 CWN 474, CriLJ 1249, [1975] ILR 2 Cal 16.

30. *Kali Dass v S.H.O. Police Station* [1979] Cr LJ 345.

31. *Abdul Halim Gazi and others v State and others* [2004] 9 BLC HCD 587.

In Blackstone's³², it has been observed that "the intent of the arrest being only to compel an appearance in Court at the return of the writ, that purpose is equally answered whether the sheriff detains his person or takes sufficient security for his appearance called bail (from the French word Bailler, to deliver) because the defendant is bailed or delivered to his sureties upon their giving security for his appearance."³³

Bail using as a noun refers to an amount of money that a person who has been accused of a crime pays to a law court so that they can be released until their trial. The payment is a way of making certain that the person will return to court for trial.³⁴

Bail is therefore a privilege granted by the Court to any accused and not a right. Same view was expressed by Thomas M. Cooley in his Treatise on the Constitutional Limitations 1868 where he wrote "but in the case of felonies, the privilege of giving bail before trial was not a matter of right; and in this country, although the practice is much more merciful than it was formerly in England, there are some cases where it is deemed almost a matter of course, and in others where it is discretionary with the magistrate to allow it or not, and where it will sometimes be refused if the proof of guilt is strong or the presumption great. Capital offences are not generally regarded as bailable; at least after indictment, or when the party is charged upon the finding of a coroner's jury; and this upon the supposition that one who may be subjected to the terrible punishment that would follow a conviction would not for any mere pecuniary considerations remain to abide the judgment."³⁵

Object of bail

The object of bail is to secure the attendance of the accused in the Court on future date and at the time of trial. Bail connotes the process of procuring the release of an accused charged with an offence by ensuring his future attendance in Court. An order of bail gives back the accused freedom of movement on condition that he would appear in Court to take his trial.³⁶

The object of the bail is to secure the attendance of the accused at the time of the trial and that the proper test to be applied for the solution of the question whether bail should be granted or not is whether it is probable that the party will appear to take his trial.³⁷ The requirement for bail is merely to secure the attendance of the prisoner for trial that it is the duty of the Court to admit the accused to bail, wherever practical, unless there are strong grounds for supposing that such person would not appear to take the trial.³⁸

The provision for bail in a criminal case beginning from the initiation of proceeding upon the conclusion of the trial has been made in Chapter XXXIX of the Code of Criminal Procedure. It is well settled that the basic conception of the word 'bail' is release of a person from the custody of police and delivery into the hands of sureties, who undertake to produce him in Court whenever

32. Blackstone's Commentaries on the Laws of England, Vol. III. Ch. 19 p. 290.

33. *Govind Prasad v The State of West Bengal* [1975] 79 CWN 474, CriLJ 1249, [1975] ILR 2 Cal 16.

34. Cambridge Dictionary (online, 2021), Cambridge University Press.

35. *Government of Bangladesh and another v Sheikh Hasina and another* [2008] 16 BLT AD 233, [2008] 28 BLD AD 163.

36. *Abdul Halim Gazi and others v State and others* [2004] 9 BLC HCD 587.

37. *Nagendra v King Emperor* [1924] AIR Cal 476.

38. *G Narasimhula v Public Prosecutor* [1978] CriLJ 502, [1978] AIR SC 429.

required to do so. An accused person is said, at common law, to be admitted to bail, when he is released from the custody of the officers of the court and is entrusted to the custody of persons known as his sureties who are bound to produce him to answer at a specified time and place the charge against him and who in default of so doing are liable to forfeit such sum as is specified when bail is granted.³⁹

Though bail is a privilege and an important right, no condition can be imposed as a precondition or condition subsequent (to be fulfilled or performed) for bail except in accordance with law. The privilege of bail is unconditional. The object of bail is primarily to ensure the appearance of an accused on a certain day and place and therefore there may be only direction for attendance at a particular time and place. To grant of bail upon the fulfillment of conditions embodied in the bail bond is not valid in Law. In *Md. Rafiqul Islam v The State*,⁴⁰ the High Court Division held that “on our discussion made above, we are of the view that the Tribunal has no power to impose condition at all when it grants bail to an accused and even the Tribunal is not competent to accept any of the conditions contrary to provision of Law which an accused may like to submit himself in his prayer for bail. We find that a condition for the bail must be quite reasonable and can be complied with by the person seeking bail and his surety without involving civil right of party. The purpose of granting bail may be defeated if withdrawal of suit is made a condition for bail. In the instant case the impugned Order for withdrawal of the suit as a condition for the bail is not supportable either in Law or on the principle of reasonableness.

In a recent case,⁴¹ the Supreme Court of India has revisited the objects, purpose and principles of grant of bail as follows—

“A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

39. *State v Abdul Wahab Shah Chowdhury and another* [1999] 51 DLR AD 242.

40. [2007] 27 BLD 131.

41. *Dataram Singh v State of U.P. and another* [2018] AIR SC 980, [2018] 3 Crimes 154 SC, [2018] 2 BomCR(Cri) 381, [2019] 1 MPLJ 25, [2018] 3 SCC 22.

While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when CrI. Appeal No. 227/2018 (@ S.L.P. (CrI.) No. 151 of 2018) Page 2 of 9 required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *Re-Inhuman Conditions in 1382 Prisons*. 1 (2017) 10 SCC 658. CrI. Appeal No. 227/2018 (@ S.L.P. (CrI.) No. 151 of 2018) Page 3 of 96.

The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in *Nikesh Tarachand Shah v Union of India* going back to the days of the Magna Carta. In that decision, reference was made to *Gurbaksh Singh Sibbia v State of Punjab* in which it is observed that it was held way back in *Nagendra v King-Emperor* that bail is not to be withheld as a punishment. Reference was also made to *Emperor v. Hutchinson* wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”⁴²

42. Summarized in *Pramod Kumar Dixit v State of U.P.* Criminal Misc. Bail Application No. 14165 of 2018, High Court of Allahabad.

Thus, the effect of granting bail is, accordingly, not to set the prisoner free from jail or custody but to release him from custody of law and to entrust him to the custody of law and to his sureties who are bound to produce him when required by the Court.⁴³ Therefore, the ultimate object is to allow him/her to enjoy liberty using the holy privilege of bail but within the scope of law and through the process of court. Bail is an ad-interim relief during the pendency of the trial or appeal or proceeding wherein the person enlarged on bail must face the trial/appeal/proceeding and accept the result at end. It eventually allows him/her not being absconder in the eye of law and being a law abiding accused in due course.

Bailable and Non-Bailable

As stated earlier, there is no definition of the word 'bail' in the Code; however offences are classified as 'Bailable' and 'Non-Bailable'. Section 4(b) defines 'Bailable Offence' to mean an offence which is known as bailable in the 'second schedule'⁴⁴ or which is made bailable by any other law for the time being in force and "Non-Bailable Offence" means any other offence.

In a bailable offence an accused is entitled to bail as a matter of right.⁴⁵ In non-bailable offence, the accused cannot seek bail as a matter of right. It is absolutely the discretion of the Court to consider the bail basing on the circumstances and grounds in the case. Non-bailability of the offence cited in the FIR cannot be a reason for the High Court Division's intervention for; even the Magistrates/lower court/tribunal Judges are competent enough to enlarge on bail a person accused of non-bailable offences in deserving cases.⁴⁶

The law of bails, which constitutes an important branch of the procedural law, is not a static one; and in a welfare State, it cannot indeed be so. It has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the mis-adventures of a person alleged to have committed a crime; and on the other, the fundamental canon of Criminal Jurisprudence, viz., the presumption of innocence of an accused till he is found guilty.⁴⁷ Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant.⁴⁸

Privilege of bail

Bail is a conditional release during pendency of the case. It is granted upon bond and sureties. The person enjoying the privilege of bail is not allowed to enjoy it without submitting bail bond. The person is also not allowed to mis-use the privilege of bail or deny attending the court proceeding upon requirement or order of the court. The person can be granted bail upon the bond executed by himself/herself or anyone on his/her behalf upon the satisfaction of court which can

43. *Patwary Rafiquddin Haider v State and another* [2002] 7 BLC 432, [2003] 55 DLR 241.

44. Second Schedule of the Code of Criminal Procedure 1898.

45. *Shamsul Alam Pathan v The State and others* [2010] 30 BLD HCD 583.

46. *Durnity Daman Commission v Khandaker Mosharraf Hossain* [2014] 66 DLR AD 92, [2014] 11 ADC 158.

47. *Superintendent and Remembrancer of Legal Affairs v Amiya Kumar Roy Choudhury* [1974] 78 CWN 320, [1974] ILR 1 Cal 304.

48. *Stack et al. v Boyle United States Marshal* [1951] 342 U.S. 1.

also be furnished with a certain amount of money.⁴⁹ As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him/her to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him/her.⁵⁰

Upon misuse, the bail can be cancelled too. It is a well-settled principle of law that granting of bail in a non-bailable offence is a concession allowed to an accused which implies that during his term of release on bail he would not misuse this concession or commit any crime. Where a person released on bail commits acts of violence in revenge against the complainant, prosecution witnesses or the police, his bail is liable to be cancelled. But before cancelling bail on such grounds, there should be clear proof on record of the allegation of misuse of the privilege of bail.⁵¹

Bail as a fundamental right

In *Government of Bangladesh and another v Sheikh Hasina and another*,⁵² learned Senior Advocate Rafique-ul Huq raised the plea that bail is a fundamental right of the respondent. But the Court replied in negative manner with the following observations—

“Nowhere in part III of the Constitution we could locate such a right as right to bail. It is only Article 32 which gives protection to right to life and personal liberty providing that no person shall be deprived of life or personal liberty save in accordance with law and someone who commits a crime and the person against whom the offence is committed brings an action before any court the offenders liberty can be taken away in accordance with law because the offender abused his right to personal liberty by violating others right and if the offender is incarcerated to ensure his attendance in Court to answer the charge and to undergo the punishment if inflicted, that restriction on his liberty will be in accordance with law and will not offend against Article 32 of the Constitution.

‘Right’ has been defined by Sir John Salmond following Jhering as a “legally recognized and protected interest.” Any interest which law recognizes or enforces, whatever be the nature or extent of that recognition or enforcement, is a legal right.

49. Section 499 of the Code provides that

“(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court Division, Court of Session or other Court to answer the charge.”

50. Section 500 of the Code reads out that

“(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.”

51. *Tanveer Ahmad v Muhammad Saqib and 2 Others* [1994] PLD Supreme Court 88.

52. [2008]16 BLT AD 233, [2008] 28 BLD AD 163.

Justice Holmes of the Supreme Court of the U.S.A. defined a legal right as “nothing but a permission to exercise certain natural powers and upon certain conditions to obtain protection, restitution or compensation by the aid of the public force.”⁵³

A.K. Brohi in his fundamental law of Pakistan opines, “Holmes’ definition narrows down rights to being considered as ‘liberties’ but then there are certain other interests which law enables us to enjoy which are on the face of them unlawful but are nevertheless allowable in certain circumstances. These are usually called privileges.”

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Bail is therefore a privilege granted by the Court to any accused and not a right. The provision of bail is provided in the Code of Criminal Procedure in Sections 496, 497, 498 and 426 thereof and in bailable offences court will grant bail as a matter of course but in non-bailable offences bail is never a right and it is sometime granted in appropriate cases as a privilege.

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This Court dealt upon the bail matter in the case of Anti-Corruption Commission vs. Barrister Mir Mohammad Helal Uddin and another and Barrister Nazmul Huda and another,⁵⁴ and Criminal Appeal No. 65 of 2007 and no further discussion is called for here.”

Bail is not the release from the charge of the case. Bail is more like surrendering thyself before the Court and coming under the process of law with a legal promise (oath, in good way) not to mis-use the privilege of bail. Bail as opposite to ‘staying behind the bar’ is something which goes with personal liberty and freedom. Liberty, thus freedom is our fundamental right as guaranteed under Article 32 of the Constitution of the People’s Republic of Bangladesh.

Bail gives the accused to continue with his/her normal life and livelihood until he/she is proved guilty beyond all reasonable doubts. It also gives a good escape to the State as well for not putting an accused behind the bar until the charge against him/her is proved beyond doubt through the microscopic process of trial and delineate examination of witnesses and evidences on record. If an accused needs to stay in jail till the end of trail (which requires a quite time indeed) but later is proved not guilty after trial, it brings total disaster in his/her life, and this kind of loss is literally irreparable. For that reason, during continuation of trial until the accused is proved guilty beyond reasonable doubt, bail is considered positively.

The significance and sweep of Article 21⁵⁵ make the deprivation of liberty a matter of grave concern and permissible only when the law authorizing it is reasonable, even-handed and geared

53. Justice Holmes, *Common Law* (Publication Boston 1951) 214.

54. [2008] 60 DLR AD 57.

55. Article 21 of Indian Constitution is kind of similar to Article 32 of our Constitution. Article 21 provides that “no person shall be deprived of his life or personal liberty except according to a procedure established by law.” Article 32 provides that “no person shall be deprived of life or personal liberty save in accordance with law.”

to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice to the individual involved and society affected.⁵⁶

It is well known that while considering the application for bail and in order to ascertain as to whether a *prima facie* case for bail has been made out or not, the court may take into consideration the nature of accusation, the nature of evidence in support of the same, the severity of punishment to be awarded the conduct and character of the accused. But at the stage of granting an application for bail merits of the case need not be discussed which might adversely affect the case and prejudice the accused.⁵⁷

Some principles of bail and judicial discretion

As discussed earlier Sections 496 – 498 of the Code provides the fundamental principles relating to bail. Section 496 provides in what cases bail is to be taken.⁵⁸ Section 496 deals with bailable offence.⁵⁹ In case of bailable offence the person accused has the indefeasible right to bail of course, subject to satisfactory sureties being offered.⁶⁰ Section 497 deals with Bail in Non-Bailable offence.⁶¹ Section 498 vests power upon the Court to direct admission to bail or

56. *Babu Singh v State of U.P.* [1978] 1 SCC 579.

57. *Jitendra Nath Trivedi v State of U.P.* [1987] ACR 928.

58. Section 496 reads out “When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3).”

59. *Mrs. Laila Jerin alias Laila Akhtar v The State* [2003] 11 BLT HCD 332, [2002] 22 BLD HCD 478.

60. *Ibid.*

61. Section 497 states that—

(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) The High Court Division or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

reduction of bail.⁶² The principles are not exactly different depending on the nature or degree of crimes.

However, from second schedule of the Code where some offences have been classified as bailable gives the vibe that bailable offences are of simple nature crimes attracting less punishment and affecting less community. Still in case of grave types of offences there are differences too, such as, rape or murder cannot be compared to simple dacoity or extortion or grievous hurt. One unintentional murder under sudden anger cannot be compared to serial killing or brutal murder. Still, no Statute exactly provides the principles of bail to be followed by the court in such cases. It depends upon the discretion of the court. It is for the better; otherwise it would be too unjust curtailing the discretionary hands of the court who can exercise judicious mind case to case basis. Nevertheless, several guiding principles have been developed by the judiciary in its own way, which develops one important branch of criminal jurisprudence.

Nonetheless, it is often asked that what the judicial discretion is in bail context is. In the elegant words of Benjamin Cardozo : “the Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knighterrant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in the social life. Wide enough in all conscience, is the field of discretion that remains.” Therefore, although the powers are wide the judicial discretion would impose self-restraint but it would depend upon fact and circumstances of the case.⁶³

The Supreme Court held that “the better view seems to me to be that the policy of the Law in respect of bail to persons, accused of non-bailable offences, is laid down in Section 497, and the same policy should be kept in view, while considering the question of bail under Section 498, Criminal Procedure Code. After all, judicial discretion has to be exercised, while granting bail and the power conferred by Section 498 of the Code cannot be construed to be purely arbitrary.⁶⁴ Section 498 of the Code of Criminal Procedure is ancillary or subsidiary to Section 496 and 497 and does not in any way enlarge the categories of persons to whom bail can be granted under Chapter XXXIX.⁶⁵ This necessarily leads to the inference that such persons must be under custody before they can be given any relief by the High Court or the Court of Sessions.⁶⁶ The Policy of Law in respect of bail to persons accused of Non-Bailable offences laid down in section 497 is to be kept in view in considering bail under section 498 of the Code.

In non-bailable offences, neither the accused has any right to claim bail nor the Court has uncontrolled power to enlarge him/her on bail. In such cases, the Court can exercise its discretionary power upon proper application of judicial mind-this exercise should not be arbitrary

62. Section 498 provides that “the amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court Division or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.”

63. *Patwary Rafiquddin Haider v State and another* [2002] 7 BLC 432, [2003] 55 DLR 241.

64. *Sadiq Ali v State* [1966] 18 DLR SC 393.

65. *Crown v Khushi Muhammad* [1953] 5 DLR. Federal Court 86.

66. *Ibid.*

test the ends of justice may be defeated. On the other hand, the police have statutory right to arrest any person who appears to them to have involved in the commission of such offence and investigated the case without permission of the Court. The police officer acting under section 156(3) is not a delegate of the Magistrate and the investigation by him is not one on behalf of the Magistrate or Court. The High Court Division has no inherent power to interfere with the exercise of that power unless it is apparent that the case is preposterous.⁶⁷

Cognizable and non-cognizable offences

In cognizable offences police can arrest without warrant,⁶⁸ and in non-cognizable offences police may not arrest without warrant.⁶⁹ However, after arrest, Police forward the accused before the Court. The accused can pray for bail before the Court on being produced or appearing before it.⁷⁰ An accused can also pray for bail by surrendering voluntarily before the Court. This kind of surrender can be of two types – (i) one before the cognizance Court or the trial Court (depending on the stage of case), and (ii) the other is surrendering before the higher Courts, which is popularly known as anticipatory bail; Sections 496 – 498 are the guiding provisions for bail of these types.

The Laws and Principles regulating grant of bail under section 496, 497 and 498 of the Code have been dealt with in some authorities. In the case of *Crown v Khushi Muhammad*,⁷¹ it has been held that a person cannot be admitted to bail against whom a Report has been lodged at the Police Station but who has not been placed in custody or under any other form of restraint or against whom no warrant of arrest has been issued. The Rule laid down in *Crown v Khushi Muhammad* was extended by their Lordships of Pakistan Supreme Court to granting of Anticipatory Bail to a person whose arrest is imminent on a criminal charge by Police. The Scope of granting bail under section 496, 497 and 498 of the Code came up for consideration before Pakistan Supreme Court in *Muhammad Ayub v Muhammad Yaqub and State*⁷². The off quoted observation of Pakistan Supreme Court is couched in the language “under section 496 and 497, Criminal Procedure Code,

67. *Wadud Mollah v Nayem and others* [2014] 11 ADC AD 680, [2015] 20 BLC AD 93.

68. Section 4(1)(f) of the Code of Criminal Procedure 1898 provides that ““cognizable offence” means an offence for, and “cognizable case” means a case in, which a Police-officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant”.

69. Section 4(1) (n) of the Code of Criminal Procedure 1898 provides that ““non-cognizable offence” means an offence for, and “non-cognizable case” means a case in, which a police-officer, may not arrest without warrant”.

70. The word “appears” in section 497(1) of the Code means “Surrender” in “Custody”. The Word “appears”, thus, means the appearance of a person who is required to surrender to custody under an order of arrest made against him and, therefore, the accused is to appear physically before the “Court” and the “Court” means the Court of Magistrate which has power to take cognizance of the offence/case. The “appearance” before “Court” as contemplated under section 497(1) of the Code is definitely not “High Court Division”. “Appearance” before “Court”, thus, cannot be construed as “appearance” before “High Court Division” and is to be construed as “appearance” before “Magistrate. The High Court Division, therefore, does not possess power under section 497 of the Code to grant bail to an accused person when he/she appears on surrender. The Magistrate before whom the accused person appears on Surrender will deal with bail matter and exercise discretion judiciously either granting bail or refusing to grant bail.

[*Mrs. Laila Jerin alias Laila Akhtar v The State* [2003] 11 BLT HCD 332, [2002]22 BLD HCD 478.]

71. *Crown vs Khushi Muhammad* [1953] 5 DLR FC 86

72. [1967] 19 DLR SC 38.

the Court can bail out a person only, if he has been placed under actual custody or appears in answer to a process issued or is brought before the Court, presumably by the police, or by some other arresting authority. In other words, these sections apply where there has been an actual arrest attracting the Court's jurisdiction or the Court is seized of the proceedings directly, in which bail is requested. Section 498, however, would be called in aid, before the Court of Session and the High Court even where the Court is not seized directly of the proceedings in question and where no actual arrest has been made so far but anticipatory bail is asked for e.g. where the case is still at a stage of investigation by the police or a pending in a Subordinate Court. The power to grant such anticipatory bail would thus be confined to the High Court and the Court of Session and other Court would be excluded from its scope."⁷³

Anticipatory bail in cases involving death penalty or otherwise

Laws and Principles regulating anticipatory bail have been dealt with by our Appellate Division in *The State Vs. Abdul Wahab Shah Chowdhury* and another, 4 MLR AD 291. The Appellate Division on consideration of good number of authorities stated thus—

“Ordinarily when a person is wanted in connection with a non-bailable offence of grave nature he is not entitled to anticipatory bail. All persons charged with non-bailable offences must be treated equally unless, of course, there are special circumstances which need special consideration in particular facts of a case.

Granting of anticipatory bail is an extraordinary remedy and as such in the case of accusations of non-bailable offences anticipatory bail should to be granted and the person should be directed to seek bail under section 497 of the Code of Criminal Procedure.

Anticipatory bail should be granted by the High Court Division for a limited period or till filing of the charge-sheet, as the case may be, the accused must appear before the court concerned and obtain fresh bail from the court on the merit of the case.”

Section 498 is used in case of regular bail or also in case of anticipatory bail. In dealing with an application for bail the Judge must also remember that the course of investigation should never be impeded otherwise, the course of justice may be frustrated. That cannot be allowed. The Judge must also remember that the purpose of allowing an anticipatory bail is to give the applicant a temporary respite in a proceeding which is apparently commenced not for securing justice but for some collateral purpose. But ultimately he has to appear before the concerned Court of the Magistrate; as such, in proper cases anticipatory bail may be granted, but for a very short period, such as, between 2 to 4 weeks and not for a long period of time, or for a bit more. It must also be remembered that sooner he appears before the magistrate the better. The Magistrate after hearing both the parties would do the needful. If any of the parties is aggrieved, he may always seek justice in a higher forum. But such a bail should not be for a longer period which may impede the investigation.⁷⁴

In a recent case, our Appellate Division elaborately discussed the development of principles in granting anticipatory bail, and held that “No inflexible guidelines or straitjacket formula can be

73. *Mrs. Laila Jerin alias Laila Akhtar v The State* [2003] 11 BLT HCD 332, [2002] 22 BLD HCD 478.

74. *State v Md. Monirul Islam alias Nirab* [2011] 19 BLT AD 144.

provided for grant or refusal of anticipatory bail. No attempt should be made to provide right and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. Few principles for grant of anticipatory bail can be summarized as follows :

- (i) The FIR lodged against the accused needs to be thoroughly and carefully examined;
- (ii) The gravity of the allegation and the exact role of the accused must be properly comprehended;
- (iii) The danger of the accused absconding if anticipatory bail is granted;
- (iv) The character, behavior, means, position and standing of the accused;
- (v) Whether accusation has been made only with the object of injuring or humiliating the applicant by arresting him. Because it is to be remembered that a worst agony, humiliation and disgrace is attached to arrest. Arrest leads to many consequences not only for the accused but for his entire family and at the same time for the entire community;
- (vi) A balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and thorough investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (vii) The anticipatory bail being an extra ordinary privilege, should be granted only in exceptional cases. Such extraordinary judicial discretion conferred upon the Higher Court has to be properly exercised after proper application of mind to decide whether it is a fit case for granting anticipatory bail not according to whim, caprice or fancy;
- (viii) A condition must be imposed that the applicant shall not make any inducement or threat to the witnesses for tampering the evidence of the occurrence;
- (ix) The apprehension that the accused is in a position to influence, induce or coerce witnesses to desist from furnishing relevant information to the investigating agency cannot be considered to be imaginary and the court ought to have considered that aspect seriously before granting anticipatory bail;
- (x) In the cases involve grave offence like murder, dacoity, robbery, rape etc. where it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims the accused should never be enlarged on anticipatory bail. Such discretion should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise;
- (xi) It is to be borne in mind about the legislative intention for the purpose of granting anticipatory bail because legislature has omitted the provision of Section 497A from the Code;
- (xii) It would be improper exercise of such extraordinary judicial discretion if an accused is enlarged on anticipatory for a indefinite period which may cause interruption on the way of holding thorough and smooth investigation of the offence committed;
- (xiii) The Court must be extremely cautious since such bail to some extent intrudes in the sphere of investigation of crime;

- (xiv) While enlarging an accused on anticipatory bail, the Court must direct the applicant to co-operate with the investigating officer in every steps of holding proper investigation if the same is needed;
- (xv) The anticipatory bail granted by the Court should ordinary be continued not more than 8(eight) weeks and shall not continue after submission of charge sheet, and the same must be in connection with non-bailable offence;
- (xvi) The Court granting anticipatory bail will be at liberty to cancel the bail if a case for cancellation of bail is otherwise made out by the State or complainant.⁷⁵⁷⁶

In expressing the ratio decidendi in *State vs. Zakaria Pintu*, 31 BLD (AD) 20, 62 DLR (AD) 420 the Appellate Division kept no room for deviation from the following essentialities :

- i) Assumption of jurisdiction to consider anticipatory bail is an extra-ordinary one.
- ii) Discretion of the High Court Division in granting bail, very wide though, must be encompassed by judicial circumspection based on established legal principles, without resorting to arbitrary consideration.
- iii) The Judges concerned must go through the FIR meticulously and it must be reflected in their order that they have thoroughly scanned the facts and the allegations scripted in the FIR.
- iv) Sometimes it is imperative on the part of the Court to refuse pre-arrest-bail when allegations against the petitioners are of serious nature, because the Court must always nurture in their introspection that justice must eventually be done by ensuring punishment for the offenders, as otherwise the fabrics of the civilized society will crumble.
- v) The Judges must not be oblivious of the interest of the victims and the society as a whole, for justice connotes even handedness.
- vi) Anticipatory bail application must be considered in the backdrop of the possibility that investigation process, in consequence of enlarging the accused on bail, may be impeded.
- vii) Prevailing situation should not be ignored.

In *State v Abdul Wahab Shah Chowdhury*,⁷⁷ ATM Afzal C.J., making it abundantly clear that pre-arrest bail is an extraordinary remedy, an exception to the general law of bail, can be granted only in extra-ordinary and exceptional circumstances upon proper and intelligible exercise of discretion.⁷⁸ Therefore, there are not many differences in principles applying for granting anticipatory bail or regular bail in cases attracting death penalty or not. Discretion of the court is important which the court exercises judiciously and reasonably. It develops the jurisprudence in the relevant pasture.

75. *The State v Morshed Hasan Khan and others* [2019] CLR AD 146, [2019] 71 DLR AD 364.

76. Please see the Appendix for the full judgment of the case.

77. [1999] 51 DLR (AD) 243.

78. *Durnity Daman Commission v Khandaker Mosharraf Hossain* [2014] 11 ADC AD 158, [2014] 34 BLD AD 118, [2014] 2 CLR AD 100, [2014] 66 DLR AD 92.

Sample

DISTRICT : DHAKA.
IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

CRIMINAL MISCELLANEOUS CASE NO. _____ OF 2020.

IN THE MATTER OF :

An application under section 526 of Code of Criminal Procedure, 1898.

AND

IN THE MATTER OF :

Motiur Rahman alias Moti, son of Abdul Latif, of Village- Malikanda, Police Station- Nababgonj, District- Dhaka.

.....**Accused-Petitioner**
(In Bail)

= V E R S U S =

The State

.....**Opposite Party**

AND

IN THE MATTER OF :

For transfer of Druto Bichar Tribunal Case No. 01 of 2019 arising out of Nababgonj Police Station Case No. 16 dated 27.03.2017, corresponding to GR Case No. 37 of 2017 under sections 302/114/109/120B/34 of the Penal Code, 1860, now pending before the Druto Bichar Tribunal No. 1, Dhaka.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Supreme Court of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition on behalf of the accused-petitioner above named most respectfully—

S H E W E T H:

1. That this application is filed for transfer of Druto Bichar Tribunal Case No. 01 of 2019 arising out of Nababgonj Police Station Case No. 16 dated 27.03.2017, corresponding to GR Case No. 37 of 2017 under sections 302/114/109/120B/34 of the Penal Code, 1860, now pending before the Druto Bichar Tribunal No. 1, Dhaka
2. That the accused-petitioner is a law abiding and peace loving citizen of Bangladesh. He comes from a respectable Muslim family. The accused-petitioner is an Advocate being enrolled with the Bangladesh Bar Council on 13.04.1996 and since then he is a regular member of Dhaka Bar Association. The accused-petitioner is also a regular member of Bangladesh Supreme Court Bar Association.
3. That on 27.03.2017, one Md. Ershad, son of late Jan Bepary of Village- Malikanda, Police Station- Nowabgonj, District- Dhaka lodged an *ejahar* with Nababgonj Police Station, Dhaka against the accused-petitioner and others under section 143/302/34 of the Penal Code, 1860 alleging *inter-alia* that Motiur Rahman @ Moti along with 22 (twenty two) F.I.R. named accused had previous enmity out of land dispute 2 (two) years ago. That out of that said enmity, they had several cases against each other and F.I.R. named accused No. 1 and 2 threatened to kill the victim. Consequently, on 26.03.2017 at about 3.30 pm, when the victim was going to Malikanda Chack through a Kacha Road beside the house of accused No. 2, all F.I.R named accused intentionally, being equipped with *Ram Da, Chapati, Chinese Kural*, all on a sudden while coming to attack the victim, the victim started hue and cry by shouting help, 'help' and ran to the crops field of one, Paran Chowdhury. That thereafter the F.I.R named accused No. 3, namely Anis blew the victim on the back by Ramda and victim fell down on the earth. Thereafter, F.I.R named accused No. 5 namely Aulad cut off the right hand of the victim by Chapati, F.I.R named accused No. 4 namely Sharif cut off the right leg of the victim by Ramda, F.I.R named accused No. 6 namely Kader cut off the left hand of the victim by Chinese Kural. Thereafter all the accused made blow by Chapati, Chinese Kunal, Ramda and cut off the legs and hands from the body of the victim. That the informant along with his neighbors tried to go to the place of occurrence but the accused threatened them by saying "go and see-we killed him, cut him into pieces and if you come towards the place, we will kill you as well". Thereafter, they ran towards the house of accused No. 3; Later the informant along with other people of the locality went to the place of occurrence and found the victim dead and left foot, two hands were separated from his body. Hence is the case. That the said *ejahar* was registered as Nababgonj Police Station Case No. 16 dated 27.03.2017 under sections 143/302/34 of the Penal Code, 1860 and one Sub Inspector (S.I) of Police was appointed as investigation officer for investigating the case. Certified copy of the said FIR is annexed hereto and marked as **Annexure- "A"**.
4. That thereafter, on 29.04.2017, 28.03.2017 and 25.06.2017, the investigation officer seized some alamsats and prepared seizure list in presence of the witnesses. Certified copies of the seizure lists are annexed hereto and marked as **Annexure- "B", "B-1" and "B-2"**.

5. That on the date of occurrence, the investigation officer visited the place of occurrence, prepared sketch map and prepared inquest report of the deceased. Certified copy of the said Inquest Report dated 26.03.2017 is annexed hereto and marked as **Annexure- “C”**.
6. That the dead body was sent to the Department of Forensic Medicine, Sir Salimullah Medical College, Dhaka for preparing post mortem report. After examination the report was submitted on 27.03.2017. Certified copy of the said Postmortem Report dated 27.03.2017 is annexed hereto and marked as **Annexure- “D”**.
7. That on 28.03.2017, one witness namely Khorshed made confessional statement under section 164 of the Code of the Criminal Procedure, 1898. Thereafter on 27.04.2017, the F.I.R named accused namely Awlad Hossain and Sharif Sheikh made confessional statement which are inculpatory in nature. Thereafter on 30.04.2017, the F.I.R named accused namely Nekobbobor Ali and Abdul Kader made confessional statement implicating the accused petitioner. Certified copies of the confessional statements made by accused Sharif Sheikh, Awlad Hossain, Abdul Kader and Nekobbobor Ali under section 164 of the Code of the Criminal Procedure, 1898 are annexed hereto and marked as **Annexure- “E”, “E-1”, “E-2”, “E-3” and “E-4”**.
8. Thereafter on 31.05.2017, F.I.R named accused namely Awlad Hossain, Sharif Sheikh, Nekbar Ali and Abdul Kader made applications before the learned Chief Judicial Magistrate, Dhaka for retracting their confessional statements which were made under section 164. Certified copies of retract applications are annexed hereto and marked as **Annexure- “F” and “F-1”**.
9. That thereafter on 09.09.2017, after completion of perfunctory investigation, the investigation officer filed Charge Sheet No. 94 dated 09.09.2017 under sections 302/114/109/34 of the Penal Code, 1860 against the accused-petitioner and others; and the said Charge Sheet was accepted by the learned Senior Judicial Magistrate, Cognizance Court, Nababgonj, Dhaka. Certified copy of the said Charge Sheet No. 94 dated 09.09.2017 is annexed hereto and marked as **Annexure- “G”**.
10. That thereafter, the learned Senior Judicial Magistrate sent the case for trial to the Court of Sessions Judge where the case was registered as Session Case No. 947 of 2018 and then transferred to the Additional District and Sessions Judge, Court No. 5 whereupon charge was framed on 28.01.2019 under sections 302/114/109/120B/34 of Penal Code vide order dated 28.01.2019. Thereafter, the Sessions Case No. 947 of 2018 was transferred to the Druto Bichar Tribunal No. 1, Dhaka where the case was registered as the Druto Bichar Tribunal Case No. 1 of 2019. It is pertinent to mention that when the case was pending before this Tribunal, all the appeared accused voluntarily surrendered before the Tribunal and prayed for bail on earlier terms and conditions, but the Tribunal enlarged all the accused on bail except two accused namely Mr. Anis Master and Mst. Merry without assigning any reason even though there was no misuse of bail by any of the accused including said Mr. Anis and Mst. Merry. Subsequently, they obtained bail from the Hon’ble High Court Division. Certified copy of the charge framing order and order dated 12.02.2019 is annexed hereto and marked as **Annexure- “H” and “H-1”**.

11. That on 18.06.2019, the PW-1 made his deposition, and was cross-examined by the accused on several dates ending on 06.08.2019. On 18.09.2019, the PW-2 made his deposition and was cross-examined by the accused on several dates ending on 24.11.2019. Certified copies of the deposition of witnesses of PW-1 and PW-2 are annexed hereto and marked as **Annexure- “I” and “I-1”**.
12. That on 24.11.2019, the learned Tribunal ordered that summons to be issued to the rest 27 witnesses and fixed several dates, i.e. 8.12.2019, 9.12.2019, 10.12.2019, 11.12.2019 and 12.12.2019 for examination of all witnesses by a single Order dated 24.11.2019.
13. That on 08.12.2019, the learned Tribunal took the deposition of PW-3 Bakkar Bepari and very arbitrarily compelled the accused parties to complete the cross-examination on 10.12.2019. But, according to the Order dated 24.11.2019, Bakkar Bepari was supposed to give his statement on 14.01.2019. Certified copy of the deposition of witnesses of PW-3 is annexed hereto and marked as **Annexure- “J”**.
14. That on 10.12.2019, the learned Tribunal took deposition of PW-4 Md. Khorshed and very arbitrarily compelled the accused parties to complete the cross-examination on the same date. But according to Order dated 24.11.2019, PW-4 was supposed to make his deposition on 08.12.2019. Certified copy of the deposition of witnesses of PW- 4 annexed hereto and marked as **Annexure- “K”**.
15. That on 11.12.2019, the learned Tribunal took deposition of PW-5 Azhar Ahmed Babul and without giving sufficient time, very arbitrarily compelled the accused parties to complete the cross-examination on the date. But according to Order dated 24.11.2019, PW-5 was supposed to give his statement on 05.01.2020. Certified copy of the deposition of witnesses of PW-5 annexed hereto and marked as **Annexure- “L”**.
16. That on 11.12.2019, when Md. Khorshed, upon taking oath, began to give such statement (which is truth) as is not favorable for the prosecution, the learned Judge of the Tribunal became very angry, and in the open court he asked the Public Prosecutor why that person (PW- 4) had been brought to the Tribunal. At one stage, he threw the records on his table with force and went to his room (khas kamra). After a while, he called the PP to his room and said that he would not take his statement any more on that day. But, when the lawyers of the accused-petitioner and others said that the learned Judge could not pass his order through the PP when the witness was in the dock for making his deposition as per the order of the court and the lawyers were waiting in the court for examining and cross-examining the witness. At one stage, the learned Judge came to the Court and decided to take deposition of the witness standing in the dock. Immediately the lawyers of accused-petitioner and other accused said that they could not expect justice from the Tribunal anymore. The lawyers also verbally prayed the learned Judge of the Tribunal to transfer the case to another court, but the learned judge did not pay heed to the verbal prayer of the lawyers. Thereafter, the learned Judge of the Tribunal took the deposition of the witness and compelled the lawyers of the accused to cross-examine the same witness on the same date. However, at his conduct the PP declared the PW-4 hostile.

17. That the next dates fixed for recording deposition of the rest witnesses are 05.01.2020, 06.01.2020, 07.01.2020, 08.01.2020, 09.01.2020, 12.01.2020, 13.01.2020, 14.01.2020. The dates for taking deposition of witnesses are thereby as follows—

সাক্ষীদের নাম	তারিখ
মোঃ খোরশেদ (চার্জশীট ভুক্ত সাক্ষী নং-৪)	০৮/১২/২০১৯ ইং
ডাঃ মোঃ হারুন উর রশিদ (চার্জশীট ভুক্ত সাক্ষী নং-২৭)	০৮/১২/২০১৯ ইং
এ.এস.আই-২২৯ রফিকুল ইসলাম (লিটন) (চার্জশীট ভুক্ত সাক্ষী নং-২৯)	০৯/১২/২০১৯ ইং
তানিয়া, স্বামী- বাক্সার বেপারী (চার্জশীট ভুক্ত সাক্ষী নং-৫)	০৯/১২/২০১৯ ইং
মেহেনাজ, স্বামী- এরশাদ বেপারী (চার্জশীট ভুক্ত সাক্ষী নং-৬)	১০/১২/২০১৯ ইং
পরাণ চৌধুরী (চার্জশীট ভুক্ত সাক্ষী নং-২২)	১০/১২/২০১৯ ইং
জনাব তাওহীদ আল-আজাদ, ম্যাজিস্ট্রেট (চার্জশীট ভুক্ত সাক্ষী নং-২৬)	১১/১২/২০১৯ ইং
বাদল শেখ (চার্জশীট ভুক্ত সাক্ষী নং-৮)	১১/১২/২০১৯ ইং
মিজানুর শেখ (চার্জশীট ভুক্ত সাক্ষী নং-৯)	১২/১২/২০১৯ ইং
এস.আই আলমগীর কবির (চার্জশীট ভুক্ত সাক্ষী নং-২৮)	১২/১২/২০১৯ ইং
মোঃ আলাউদ্দিন বেপারী (চার্জশীট ভুক্ত সাক্ষী নং-৭)	০৫/০১/২০২০ ইং
আজহার আহমেদ বাবুল (চার্জশীট ভুক্ত সাক্ষী নং-১৩)	০৫/০১/২০২০ ইং
সজল (চার্জশীট ভুক্ত সাক্ষী নং-১১)	০৬/০১/২০২০ ইং
রামু মন্ডল (চার্জশীট ভুক্ত সাক্ষী নং-১৮)	০৬/০১/২০২০ ইং
ইব্রাহিম বেপারী (চার্জশীট ভুক্ত সাক্ষী নং-১৫)	০৭/০১/২০২০ ইং
রনজিত মন্ডল (চার্জশীট ভুক্ত সাক্ষী নং-২০)	০৭/০১/২০২০ ইং
নুরুন্ নাহার, স্বামী- মৃত গোলাপ হোসেন পেংকু (চার্জশীট ভুক্ত সাক্ষী নং-১৬)	০৮/০১/২০২০ ইং
জনাব আতিকুল ইসলাম, ম্যাজিস্ট্রেট (চার্জশীট ভুক্ত সাক্ষী নং-২৪)	০৮/০১/২০২০ ইং
সাবিনা, স্বামী- মৃত গোলাপ হোসেন পেংকু (চার্জশীট ভুক্ত সাক্ষী নং-১৭)	০৯/০১/২০২০ ইং
জনাবা আফসানা আবেদীন, ম্যাজিস্ট্রেট (চার্জশীট ভুক্ত সাক্ষী নং-২৫)	০৯/০১/২০২০ ইং
আরমান শেখ (চার্জশীট ভুক্ত সাক্ষী নং-২১)	১২/০১/২০২০ ইং
উপেন্দ্র মন্ডল (চার্জশীট ভুক্ত সাক্ষী নং-২৩)	১২/০১/২০২০ ইং
এস.আই আরাফাত হোসেন, তদন্তকারী কর্মকর্তা (চার্জশীট ভুক্ত সাক্ষী নং-৩২)	
মোঃ হোসেন (চার্জশীট ভুক্ত সাক্ষী নং-২)	১৩/০১/২০২০ ইং
মোঃ জাহিদ খান (চার্জশীট ভুক্ত সাক্ষী নং-১৪)	১৩/০১/২০২০ ইং
বাক্সার বেপারী (চার্জশীট ভুক্ত সাক্ষী নং-৩)	১৪/০১/২০২০ ইং
আব্দুল মালেক দেওয়ান (চার্জশীট ভুক্ত সাক্ষী নং-১২)	১৪/০১/২০২০ ইং

Certified copy of the order sheet is annexed hereto and marked as **Annexure- “M”**.

18. That it is submitted that the accused-petitioner is under reasonable fear and suspicion that the accused persons would not get a fair and impartial trial from the Druto Bichar Tribunal No. 1, Dhaka. Their fear arises out of the conduct of the learned Presiding Judge when he became furious and violent at the Public Prosecutor after hearing the deposition of the PW-4 and without giving sufficient time, compelled the accused-petitioner to cross-examine the prosecution witnesses on the same day of examination in chief. Hence, the trial of the case may kindly be transferred from this Tribunal to another competent Court for ensuring a fair and impartial trial and thereby, securing ends of justice.

19. That it is submitted that the learned Tribunal below has already taken deposition of witnesses on earlier dates apart from the fixed dates, which is absolutely illegal, arbitrary, malafide and personally tendered by the learned judge below. It *prima facie* shows that there is no fair chance of trial in this case. Hence, the trial of the case may kindly be transferred from this Tribunal to another competent Court for ensuring a fair and impartial trial and thereby, securing ends of justice.
20. That it is submitted that in the court the learned judge often expressed his attitude of proud of awarding capital punishment and life imprisonment to many other accused earlier, and he took it as a matter of great proud. It is also observed that whenever any statement would come in favour of the accused during examination or cross- examination, he reacted badly and tried to by-pass or avoid the narration of deposition of witness then and there. He used to escape that type of statements and also tried to question the witnesses at his own motion, and sometimes diverting them from the original point. He made this kind of arrogant statements regarding this case even before completing the full trial or taking statements of witnesses. It *prima facie* shows that there is no fair chance of trial in this case. Hence, the trial of the case may kindly be transferred from this Tribunal to another competent Court for ensuring a fair and impartial trial and thereby, securing ends of justice.
21. That it is submitted that an independent approach of the trial Court towards the evidence produced before it is a pre-condition for a fair and impartial trial. But in the instant case, the learned Tribunal has failed to maintain an independent approach to the testimony of prosecution witnesses. Hence, the trial of the case may kindly be transferred from this Tribunal to another competent Court for ensuring a fair and impartial trial and thereby, securing ends of justice.
22. That in view of the above facts and circumstances, the accused-petitioner begs to move this application for transfer of Druto Bichar Tribunal Case No. 01 of 2019 arising out of Nababgonj Police Station Case No. 16 dated 27.03.2017, corresponding to GR Case No. 37 of 2017 under sections 302/114/109/120B/34 of the Penal Code, 1860, now pending before the Druto Bichar Tribunal No. 1, Dhaka, before this Hon'ble Court on the following amongst other-

=G R O U N D S=

- I. For that the accused-petitioner is under reasonable fear and suspicion that the accused persons would not get a fair and impartial trial from the Druto Bichar Tribunal No. 1, Dhaka. Their fear arises out of the conduct of the learned Presiding Judge when he became furious and violent at the Public Prosecutor after hearing the deposition of the PW-4 and without giving sufficient time, compelled the accused-petitioner to cross-examine the prosecution witnesses on the same day of examination in chief. Hence, the trial of the case may kindly be transferred from this Tribunal to another competent Court for ensuring a fair and impartial trial and thereby, securing ends of justice.
- II. For that the learned Tribunal below has already taken deposition of witnesses on earlier dates apart from the fixed dates, which is absolutely illegal, arbitrary, malafide and

personally tendered by the learned judge below. It *prima facie* shows that there is no fair chance of trial in this case. Hence, the trial of the case may kindly be transferred from this Tribunal to another competent Court for ensuring a fair and impartial trial and thereby, securing ends of justice.

- III. For that in the court the learned judge often expressed his attitude of proud of awarding capital punishment and life imprisonment to many other accused earlier, and he took it as a matter of great proud. It is also observed that whenever any statement would come in favour of the accused during examination or cross- examination, he reacted badly and tried to by-pass or avoid the narration of deposition of witness then and there. He used to escape that type of statements and also tried to question the witnesses at his own motion, and sometimes diverting them from the original point. He made this kind of arrogant statements regarding this case even before completing the full trial or taking statements of witnesses. It *prima facie* shows that there is no fair chance of trial in this case. Hence, the trial of the case may kindly be transferred from this Tribunal to another competent Court for ensuring a fair and impartial trial and thereby, securing ends of justice.
- IV. For that an independent approach of the trial Court towards the evidence produced before it is a pre-condition for a fair and impartial trial. But in the instant case, the learned Tribunal has failed to maintain an independent approach to the testimony of prosecution witnesses. Hence, the trial of the case may kindly be transferred from this Tribunal to another competent Court for ensuring a fair and impartial trial and thereby, securing ends of justice.
- V. For that it is a settled principle of law that allegation of bias in the trial court is a good reason for transfer, provided there is factual basis to substantiate it. In the instant case, the fact of the arrogant, biased and improper reaction of the learned Judge towards the testimony of the PW 4 is enough to substantiate the allegation of bias. Hence, the trial of the case may kindly be transferred from this Tribunal to another competent Court for ensuring a fair and impartial trial and thereby, securing ends of justice.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue a Rule calling upon the opposite party to show cause as to why the trial of the Druto Bichar Tribunal Case No. 01 of 2019 arising out of Nababgonj Police Station Case No. 16 dated 27.03.2017, corresponding to GR Case No. 37 of 2017 under sections 302/114/109/120B/34 of the Penal Code, 1860, now pending before the Druto Bichar Tribunal No. 1, Dhaka should not be transferred from this Tribunal to any other competent court of law, and on perusal of the cause shown, if any, and after hearing the parties make the Rule absolute and/ or pass such other or further order or orders as your Lordships may deem fit and proper.

AND

Pending hearing of the Rule, the further proceeding of Druto Bichar Tribunal Case No. 01 of 2019 arising out of Nababgonj Police Station Case No. 16 dated 27.03.2017, corresponding to GR Case No. 37 of 2017 under sections 302/114/109/120B/34 of the Penal Code, 1860, now pending before the Druto Bichar Tribunal No. 1, Dhaka may kindly be stayed for ends of justice.

And for this act of kindness, the accused-petitioners, as in duty bound, shall ever pray.

A F F I D A V I T

I, Md. Motiur Rahman, son of Md. Abdul Latif and Most. Sufia Khatun, of House No. 3/17, Road- Ali and Nur Real Estate, Post Office- Mohammadpur-1207, Mohammadpur, Dhaka North City Corporation, Dhaka, aged about- 49 years, by faith Muslim, by profession- practitioner , by Nationality-Bangladeshi, National ID No. 6433932875 do hereby solemnly affirm and say as follows :

01. That I am the accused petitioner and *tadbirker* of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Zarif Kabir)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Zarif Kabir)

Advocate

Membership # 6731

Hall Room No.2, Supreme

Court Bar Association Building

Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample**DISTRICT : DHAKA.**

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. _____ OF 2020

IN THE MATTER OF :

Motiur Rahman alias Moti

.....**Accused-Petitioner.**

(On bail)

= V E R S U S =

The State.

....**Opposite Party.**

Supplementary Affidavit on behalf of the accused-petitioner—

I, Md. Motiur Rahman, son of Md. Abdul Latif and Most. Sufia Khatun, of House No. 3/17, Road- Ali and Nur Real Estate, Post Office- Mohammadpur-1207, Mohammadpur, Dhaka North City Corporation, Dhaka, aged about- 49 years, by faith Muslim, by profession- practitioner , by Nationality-Bangladeshi, National ID No. 6433932875 do hereby solemnly affirm and say as follows :

01. That I am the accused petitioner and *tadbirker* of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That this supplementary affidavit has been filed to produce some relevant documents before this Hon'ble Court which are necessary for proper adjudication of this application.
03. That on 7.01.2020 the petitioner filed an application before learned Tribunal below contending allegations against the presiding judge. The application is now pending and no order has been passed yet on that application. The application was received by the Public Prosecution with objection. However, on the submission of the learned Advocates for the accused persons, the learned Tribunal did not continue with taking deposition of witnesses on that day. The petitioner applied for the certified copy of the application, but it will take time to deliver. Photocopies of the application and requisite for the certified copies are annexed hereto and marked as **Annexure- "N" and "N-1"**.
04. That the petitioner craves leave of the Hon'ble Court to swear affidavit with photocopy of the annexure, originals of which are remained with the case record before the learned Tribunal and the same will be produced before the Hon'ble Court as per demand of the Hon'ble Court. The petitioner undertakes that the photocopy of annexure is true reflection of the original one and the learned Advocate of the petitioner duly attested the same.
05. That this supplementary affidavit may kindly be treated as part of the original Petition.

06. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Zarif Kabir)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Zarif Kabir)

Advocate

Membership # 6731

Hall Room No.2, Supreme

Court Bar Association Building

Mobile: 01717041929

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Sample

DISTRICT- RAJSHAHI.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. OF 2020

IN THE MATTER OF :

An application for bail under section 498 of the Code of
Criminal Procedure, 1898.

AND

IN THE MATTER OF :

Md. Kanak Chowdhury, Son of Noajesh Ali Chowdhury,
of Village- Nutun Bilsimla, House No. 111/2, Police
Station- Rajpara, District- Rajshahi, Mohanagar.

..... **Accused-petitioner**

(In jail hajat)

VERSUS

The State, represented by the Deputy Commissioner, Rajshahi.

..... **Opposite Party.**

AND**IN THE MATTER OF :**

Prayer for bail of the accused-petitioner in Rajpara Police Station Case No. 28 dated 15.10.2019 corresponding to G.R. No. 584 of 2019 (Rajpara) under section 302/34 of Penal Code, 1860, now pending in the Court of learned Chief Metropolitan Magistrate, Rajshahi.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Honble Court.

The humble petition of the accused-petitioners most respectfully;

S H E W E T H :

1. That the accused-petitioner is a law abiding and peace loving citizen of Bangladesh. He is serving for an NGO in different District (Naogaon); and he is no way connected with the alleged allegation as stated in the FIR and there is no objection against him from any end.
2. That the prosecution case in brief is that on 15.10.2010 at about 20.30 hours one Md. Moinul Islam Talukder, Son of late Abdus Sobhan Talukder of Village- Alaipur, Police Station- Natore Sadar, District- Natore being informant lodged a First Information Report against the accused-petitioner and another under section 302/34 of Penal Code- 1860 alleging inter-alia that- his brother was a lawyer. He had no children. They used to take care of a son who is basically a nephew of his wife who is the accused No. 1 in this case, and the nephew is the accused No. 2. They used to create physical pressure upon the victim. On the date of occurrence the victim was found death by hanging with ceiling fan. A two inch injury mark was found on his neck. Initially they thought it was a suicide, but subsequently they found that it was a murder. Thereafter, the informant filed this case. Certified copy of the said First Information Report is annexed hereto and marked as **ANNEXURE- "A"**.
3. That the aforesaid ejahar was recorded as Rajpara Police Station Case No. 28 dated 15.10.2019 corresponding to G.R. No. 584 of 2019 (Rajpara) under section 302/34 of Penal Code- 1860 and one Md. Shahadat Hosen Khan, Officer-in-Charge as investigating officer.
4. That on 14.09.2019 one doctor namely Md. Kafil Uddin, Assistant Professor and Divisional Head, Forensic Medicine Division, Rajshahi Medical College, Rajshahi prepared the post mortem report of the deceased. Certified copy of the post mortem report is annexed hereto and marked as **ANNEXURE- "B"**.

5. That after the occurrence the Police prepared an inquest report. In the inquest report the investigation officer recommended for deleting the homicidal death from the death certificate. Relevant portion of the inquest report is quoted below-

“মাথা, কপাল, মুখমন্ডল, ঠোট, গলা, কাঁধ হইতে হাতের আঙ্গুল পর্যন্ত, বুক, পেট, কোমর হইতে পা পর্যন্ত ও গোনাক্সসহ শরীরের বিভিন্ন অঙ্গ প্রত্যঙ্গের প্রাপ্ত জখমের বিবরণ—

মৃতের সমস্ত শরীর তার স্ত্রীর উপস্থিতিতে ভালোভাবে ওলট-পালট করিয়া পরিলক্ষিত হইলো যে, মাথা, স্বাভাবিক, কপাল, নাক, কান মুখ স্বাভাবিক। গলার উপরে সামনে ও পিছনে বৃত্তাকার ফাঁসের কালশিরা দাগ দেখা গেল। থুতনির ডানপাশে অনুঃ ২ কাটা দাগ দেখা গেল। দুই হাত স্বাভাবিক। বুক, পেট, পিঠ স্বাভাবিক। দুই পা স্বাভাবিক, পায়ের পাতা ও নখ সাদা ফ্যাকাশে। মলদ্বারে মল নাই, পুরষাঙ্গে বীর্য নাই। মৃতের সমস্ত শরীর তার ভাই মোঃ মইনুল ইসলামের দ্বারা ওলটপালট করিয়া দৃশ্যমান আঘাত বা জখমের চিহ্ন পরিলক্ষিত হইলো না।

মৃত্যুর সম্ভাব্য কারন সম্পর্কে সুরতহাল প্রস্তুতকারী কর্মকর্তার মন্তব্য

প্রাথমিক তদন্তে মৃতের স্ত্রী-ভাই ও উপস্থিত স্বাক্ষীদের জিজ্ঞাসাবাদে জানা যায় যে, মৃত মোজাম্মেল হক তালুকদার (৬২) কে অদ্য ২৭/০৯/১৯ ইং সকাল ১০.০০ টার সময় নাস্তা করে বাসায় রেখে তার স্ত্রী তার বোনের বাসায় যাই। আনুঃ বেলা ১২.১৫ ঘটিকায় মৃতের স্ত্রী মৃতের মোবাইলে বার বার ফোন দিলে কোন উত্তর না পেয়ে বাসায় এসে ঘর তালাবন্ধ অবস্থায় দেখতে পান। পরবর্তীতে ভাড়াটিয়া ও স্থানীয়দের সহায়তায় তালা ভেঙ্গে দেখা যায় যে, মোজাম্মেল হক তালুকদার ঘরের ভিতরে সিলিং ফ্যানের সাথে দড়ির সাথে গলায় ফাঁস দেয়া মাথা নোয়ানো অবস্থায় আছে। তৎক্ষণাত পরিবার ও স্থানীয়দের সহায়তায় তাকে উদ্ধার করিয়া চিকিৎসার জন্য অদ্য ২৭/০৯/১৯ ইং দুপুর ১২.০০ ঘটিকায় জ.গ.ঈ.গ.-এ জরুরী বিভাগে আনিতে কর্তব্যরত চিকিৎসক তাকে ব্রডডেথ মৃত ঘোষণা করেন। মৃত্যুর সনদে “Homicidal death should be excluded” উল্লেখ রহিয়াছে। ”

6. That it is stated that the accused-petitioner voluntarily surrounded before the learned Chief Metropolitan Magistrate, Bogura on 28.11.2019 and he was sent to Jail Hajat vide order dated 28.11.2019. Certified copy of the order dated 28.11.2019 is annexed hereto and marked as **ANNEXURE- “C”**.
7. That it is stated that the case is now under investigation and no police report has yet been submitted.
8. That it is stated that the accused-petitioner prayed for bail before the learned Metropolitan Sessions Judge, Rajshahi by filing Criminal Miscellaneous Case No. 01 of 2020 vide order dated 08.01.2020. Certified copy of the application for bail is annexed hereto and marked as **Annexure- “D”**.
9. That earlier the accused-petitioner obtained anticipatory bail from this Hon’ble Court, and on surrender the accused No. 1 was granted bail but the instant petitioner being accused No. 2 was sent to jail.
10. That it is submitted that the accused-petitioner is innocent and he is no way connected with the alleged occurrence. Hence, the accused-petitioner may kindly be granted bail.
11. That it is submitted that there is no specific allegation brought against them and they have falsely been implicated with the instant case out of grudge and previous enmity. Hence, the accused-petitioners may kindly be granted anticipatory bail.
12. That it is submitted that there was a long standing enmity prevailing on between the party due to land disputes as well as some personal clashes and the informant lodged the instant case against the accused-petitioners out of previous enmity only for harassment. Hence, the accused-petitioner may kindly be enlarged on bail.

13. That it is submitted that the allegations against the accused-petitioner brought in the FIR are out and out false, fabricated and misconceived. The allegations do not disclose any offence under section 302/34 of Penal Code- 1860. The informant has created a story only to harass the accused-petitioner. Hence, the accused-petitioner may kindly be enlarged on bail.
14. That it is submitted that the facts of the case have been created on the basis of inquest and post mortem examination report for the purpose of harassing the accused-petitioner. Hence, the accused-petitioner may kindly be enlarged on bail.
15. That it is submitted that the accused-petitioner has voluntarily surrendered before the learned Trial Court and he has been under custody since 28.11.2019. Hence, the accused-petitioner may kindly be enlarged on bail.
16. That it is submitted that the accused-petitioner is no way connected with the alleged occurrence. The informant out of instruction of a vested quarter lodged this case under sections 302/34 of the Penal Code, 1860 nothing but only to ruin his life. Hence, the accused-petitioner may kindly be enlarged on bail.
17. That it is submitted that the allegations brought in the FIR is out and out false, fabricated and misconceived. The allegations do not disclose any offence under sections 302/34 of the Penal Code, 1860. The informant created the story only to harass and humiliate the accused-petitioner. Hence, the accused-petitioner may kindly be enlarged on bail.
18. That it is submitted that the accused-petitioner is a permanent citizens of Bangladesh. He will not flee away and misuse of the privilege of bail if he is granted bail from this Hon'ble Court. The petitioners shall furnish adequate surety as per direction of this Hon'ble Court and duly face trial of the case. Hence, the accused-petitioner may kindly be enlarged on bail for ends of justice.
19. That in view of the above facts and circumstances, the accused-petitioner begs to move this application for bail in Rajpara Police Station Case No. 28 dated 15.10.2019 corresponding to G.R. No. 584 of 2019 (Rajpara) under section 302/34 of Penal Code- 1860, now pending in the Court of learned Chief Metropolitan Magistrate, Rajshahi, before this Hon'ble Court on the following amongst other—

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- I. For that the accused-petitioner is innocent and he is no way connected with the alleged occurrence. Hence, the accused-petitioner may kindly be granted bail.
- II. For that there is no specific allegation brought against them and they have falsely been implicated with the instant case out of grudge and previous enmity. Hence, the accused-petitioners may kindly be granted anticipatory bail.
- III. For that there was a long standing enmity prevailing on between the party due to land disputes as well as some personal clashes and the informant lodged the instant case against the accused-petitioners out of previous enmity only for harassment. Hence, the accused-petitioner may kindly be enlarged on bail.

- IV. For that the allegations against the accused-petitioner brought in the FIR are out and out false, fabricated and misconceived. The allegations do not disclose any offence under section 302/34 of Penal Code- 1860. The informant has created a story only to harass the accused-petitioner. Hence, the accused-petitioner may kindly be enlarged on bail.
- V. For that the facts of the case have been created on the basis of inquest and post mortem examination report for the purpose of harassing the accused-petitioner. Hence, the accused-petitioner may kindly be enlarged on bail.
- VI. For that the accused-petitioner has voluntarily surrendered before the learned Trial Court and he has been under custody since 28.11.2019. Hence, the accused-petitioner may kindly be enlarged on bail.
- VII. For that the accused-petitioner is no way connected with the alleged occurrence. The informant out of instruction of a vested quarter lodged this case under sections 302/34 of the Penal Code, 1860 nothing but only to ruin his life. Hence, the accused-petitioner may kindly be enlarged on bail.
- VIII. For that the allegations brought in the FIR is out and out false, fabricated and misconceived. The allegations do not disclose any offence under sections 302/34 of the Penal Code, 1860. The informant created the story only to harass and humiliate the accused-petitioner. Hence, the accused-petitioner may kindly be enlarged on bail.
- IX. For that the accused-petitioner is a permanent citizens of Bangladesh. He will not flee away and misuse of the privilege of bail if he is granted bail from this Hon'ble Court. The petitioners shall furnish adequate surety as per direction of this Hon'ble Court and duly face trial of the case. Hence, the accused-petitioner may kindly be enlarged on bail for ends of justice.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue a Rule calling upon the opposite party to show cause as to why the accused-petitioner shall not be enlarged on bail in Rajpara Police Station Case No. 28 dated 15.10.2019 corresponding to G.R. No. 584 of 2019 (Rajpara) under section 302/34 of Penal Code, 1860, now pending in the Court of learned Chief Metropolitan Magistrate, Rajshahi on perusal of the cause shown, if any and after hearing the parties make the rule absolute and/ or pass such other or further order or orders as your Lordships deem fit and proper.

AND

Pending hearing of the Rule, the accused-petitioner may kindly be enlarged on *ad-interim* bail in the aforesaid case.

And for this act of kindness the accused-petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Md. Jahangir Alam, son of Md. Shafiqul Islam and Most. Tahura Begum, of Village-Baroipara, Post Office- Puthia-6260, Puthia, Rajshahi, aged about- 23 years, date of birth: 11.12.1996, by faith Muslim, by profession- Student, by Nationality-Bangladeshi, National ID No. 9153517413 do hereby solemnly affirm and say as follows :—

01. That I am the *tadbirker* of this case being the cousin brother of the accused-petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

Sample
DISTRICT: DHAKA.
**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. OF 2019.

IN THE MATTER OF:

An application for bail under section 426(2) of the Code of Criminal Procedure, 1898.

AND**IN THE MATTER OF :**

Md. Monir Hossain, son of Md. Billal Hossain, of Shahid Nagar, Thana- Agargaon, District- Mymensingh, A/P- House No. 260, Road No. 1, Uttara Adabar, Thana- Mohammadpur, Dhaka.

.... **Convict-Petitioner.**

(In Jail Hajat)

-VERSUS-

The State

.... **Opposite Party.**

AND**IN THE MATTER OF :**

Order dated 7.10.2019 passed by learned Metropolitan Sessions Judge, Dhaka rejecting the prayer for bail of the convict-petitioner in Criminal Appeal No. 1015 of 2019 arising out of Gulshan Police Station Case No. 8 dated 3.04.2005 corresponding to GR No. 197 of 2005 convicting the convict-petitioner under section 22(Ga) of the Madok Drabba Niyantaran Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 2 (two) years and also to pay a fine of Tk. 2,000/- (Two Thousand) in default to suffer simple imprisonment for a period of 01 (One) month more.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion justices of the said Hon'ble Court.

The humble petition on behalf of the accused-petitioner most respectfully—

S H E W E T H :

1. That this application is filed challenging the order dated 7.10.2019 passed by learned Metropolitan Sessions Judge, Dhaka rejecting the prayer for bail of the convict-petitioner in Criminal Appeal No. 1015 of 2019 arising out of Gulshan Police Station Case No. 8 dated 3.04.2005 corresponding to GR No. 197 of 2005 convicting the convict-petitioner under section 22(Ga) of the Madok Drabba Niyantaran Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 2 (two) years and also to pay a fine of Tk. 2,000/- (Two Thousand) in default to suffer simple imprisonment for a period of 01 (One) month more.

2. That the convict-petitioner is a law abiding, peace loving and permanent citizen of Bangladesh. He is carrying out small business in his locality.
3. That the Sub inspector A.K.M. Idris Hossain along with Inspector Farid Uddin, Abdur Rob, Sub Inspector Anowar-Ul-Haque, Moinul Ahsan, Assistant Sub Inspector Mijanur Rahman, Abbas Uddin and Mukul Hossain was engaged on a special mission at Gulshan-Mahakhali dated 2.4.2005. During that mission on the same day, near about 11:40 p.m. they captured a private car having no. Dhaka Metro Ga-12-4931. Two persons ran and escaped from that car and they caught one person sitting on the driving sit named Md. Monir Hossain (convict- appellant-petitioner), son of Md. Billal Hossain. On interrogation, the convict-appellant-Petitioner said that the names of the two persons escaped were Ashraf and Kiron. Thereafter, the police found 144 can of Heinekein Beer, 244 can of Fosters Beer, 96 can of Elephant Beer in total 480 can of beer from the back of the said car. They arrested Md. Monir Hossain. As accordingly, Mr. A.K.M. Idris Hossain, Sub Inspector prepared a seizure list. Later on, Mr. A.K.M. Idris Hossain, Sub Inspector lodged a police case no. 8 (4) 2005 dated 3.4.2005 in the Gulshan Police Station under section 22 (Ga) of the Madok Drabba Niyontron Ain, 1990. On the same date the petitioner was forwarded before the court. Certified copies of the said First Information Report (FIR) and the seizure list and forwarding letter are annexed hereto and marked as **ANNEXURE- “A”, “A1” and “A-2”**.
4. That the seized products were tested through chemical examiner who submitted report on 17.04.2015. Certified copies of the chemical examination report is annexed hereto and marked as **Annexure- “B”**.
5. That after a perfunctory investigation, On 17.5.2005, the Investigating officer, Mr. Fariduddin, Sub-Inspector, DB, DCP, Dhaka submitted charge sheet under section 22 (Ga) of the Madok Drabba Niyontron Ain, 1990 against the petitioner and final report against the other two escaped persons namely Ashraf and Kiron by not sending them up. Certified copy of the charge sheet is annexed hereto and marked as **Annexure- “C”**.
6. That the case was transferred to the Leaned Joint Sessions Judge, 7th Court, Dhaka for holding trial. The learned Joint Sessions Judge was pleased to take cognizance of offence and frame charge against the convict-petitioner under section 22 (Ga) of the Madok Drabba Niyontron Ain, 1990. Thereafter, the Learned Joint Sessions Judge, 7th Court, Dhaka convicted the appellant under section 22 (Ga) of the Madok Drabba Niyontron Ain, 1990 and sentenced him to suffer rigorous imprisonment for a period of 2 (two) years and to pay fine of Tk. 2,000/- (taka two thousand) only, in default to suffer 1 (one) months simple imprisonment more. Certified copy of the judgment is annexed hereto and marked as **Annexure- “D”**.
7. That during trial the Learned Prosecutor examined only 3 (three) witnesses all of which were police officers, and no other relevant eye witness from the place of occurrence was examined. the Trial Court disregarded the fact that the complainant Mr. A.K.M. Idris Hossain, Sub inspector, investigating officer Mr. Fariduddin, Sub-Inspector, DB, DCP, Dhaka and the witnesses namely Mr.A.K.M. Idris Hossain, Md. Abbas Uddin and Md. Farid uddin of the instant case belong to the same group of police officers who arrested the convict-petitioner from the place of occurrence which clearly transpires that the investigation was not proper and witnesses were biased, partisan and not neutral. It has left

the case not proving beyond reasonable doubt and as accordingly, the convict-petitioner is entitled to be enlarged on bail during the pendency of the appeal. Certified copies of the deposition of witnesses is annexed hereto and marked as **Annexure- “E”, “E-1” and “E-2”**.

8. That thereafter, the petitioner voluntarily surrendered before the court below and filed Criminal Appeal No. 1015 of 2019 before the learned Metropolitan Sessions Judge, Dhaka who was pleased to admit the appeal by condoning delay of 39 days but rejected to enlarge the petitioner on bail vide order No. 1 dated 7.10.2019. Certified copy of the memo of appeal is annexed hereto and marked as **Annexure- “F”**.
9. That it is submitted that the convict-petitioner is only earning member of his family. Therefore, his family is facing financial problem and leading miserable life. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
10. That it is submitted that it is clearly apparent from the FIR, seizure list and charge sheet that nothing was recovered from the possession and command of the convict-petitioner. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
11. That it is submitted that the instant case, the convict-petitioner has been convicted for being found guilty for carrying and possessing drugs (beer) without license under section 22 (Ga) of the Madok Drabba Niyontron Ain, 1990. To constitute any offence under the said section, the criteria under section 10 (a) has to be fulfilled by carrying or possessing drugs without license. But, the learned trial court most erroneously failed to consider the fact that the appellant-convict-petitioner was merely a driver of the private car carrying drugs (beer) and whenever any drug is found in any transport, the driver is not the person who will be deemed to be the possessor of the drugs. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
12. That it is submitted that the learned trial court completely disregarded the fact that two independent witnesses namely Md. Rafiqul Islam and Md. Jasim Uddin though signed in the seizure list and gave deposition to the police under section 161 of the Code of Criminal procedure, 1898, were not produced before the court as a witness by the prosecution. Those two persons were the only neutral witness of the case and were not produced before the court. It has left the case not proving beyond reasonable doubt. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
13. That it is submitted that it is worth mentioning that the investigating officer showed unusual hurry in submitting the charge sheet. The case was filed on 3.4.2005 and the charge sheet was submitted on 17.5.2015 by not sending up the other fugitive accused without trying to find them out. This kind of inaction during investigation and reluctance of the investigating officer to find out the actual offender made the charge sheet completely infructuous and perfunctory. In fact, this kind of hastiness during investigation and by not sending up the actual offenders, the investigating officers tried to save the real offender by vexatiously connecting the appellant-convict-petitioner with the instant case. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
14. That it is submitted that the during the trial, the prosecution completely failed to prove the presence of mens rea of the convict-petitioner as they completely failed to produce any witness or evidence showing the prior knowledge of the appellant-convict-petitioner of having drug at the back of the car. Rather, it was sufficiently proved from the circumstance

and testimony of the witnesses that the convict-petitioner had no prior knowledge of having drug at the back of the car. It was very much apparent from the charge-sheet, testimony of all the prosecution witnesses that two persons escaped from the car seeing the police and the convict-petitioner was the only person who did not tried to escape seeing the police which clearly establishes that the convict had no prior knowledge of having drug at the back of the car and is no way connected with the alleged offence. In fact, the PW-3 during his cross-examination admitted that the convict did not try to escape and he was sitting at the driving sit. But very surprisingly and most arbitrarily, the learned trial Court completely failed to consider the same and passed the impugned order dated 28.8.2019; As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.

15. That it is submitted that the convict-petitioner is innocent and is no way connected with the alleged occurrence. No possibility to flee away as he is specific resident/address in their locality. If he is enlarged on bail from this Hon'ble Court, he will not misuse the privilege of it and he shall face trial of the aforesaid case under the law. He shall furnish bail bond as per order of this Hon'ble Court and as such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
16. That in view of the above circumstances, the accused-petitioner beg to move this application before the Hon'ble Court for bail in the aforesaid case on the following amongst others—

GROUND S

- I. For that the convict-petitioner is only earning member of his family. Therefore, his family is facing financial problem and leading miserable life. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
- II. For that it is clearly apparent from the FIR, seizure list and charge sheet that nothing was recovered from the possession and command of the convict-petitioner. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
- III. For that the instant case, the convict-petitioner has been convicted for being found guilty for carrying and possessing drugs (beer) without license under section 22 (Ga) of the Madok Drabba Niyontron Ain, 1990. To constitute any offence under the said section, the criteria under section 10 (a) has to be fulfilled by carrying or possessing drugs without license. But, the learned trial court most erroneously failed to consider the fact that the appellant-convict-petitioner was merely a driver of the private car carrying drugs (beer) and whenever any drug is found in any transport, the driver is not the person who will be deemed to be the possessor of the drugs. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
- IV. For that the learned trial court completely disregarded the fact that two independent witnesses namely Md. Rafiqul Islam and Md. Jasim Uddin though signed in the seizure list and gave deposition to the police under section 161 of the Code of Criminal procedure, 1898, were not produced before the court as a witness by the prosecution. Those two persons were the only neutral witness of the case and were not produced before the court. It has left the case not proving beyond reasonable doubt. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice

- V. For that it is worth mentioning that the investigating officer showed unusual hurry in submitting the charge sheet. The case was filed on 3.4.2005 and the charge sheet was submitted on 17.5.2015 by not sending up the other fugitive accused without trying to find them out. This kind of inaction during investigation and reluctance of the investigating officer to find out the actual offender made the charge sheet completely infructuous and perfunctory. In fact, this kind of hastiness during investigation and by not sending up the actual offenders, the investigating officers tried to save the real offender by vexatiously connecting the appellant-convict-petitioner with the instant case. As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
- VI. For that the during the trial, the prosecution completely failed to prove the presence of mens rea of the convict-petitioner as they completely failed to produce any witness or evidence showing the prior knowledge of the appellant-convict-petitioner of having drug at the back of the car. Rather, it was sufficiently proved from the circumstance and testimony of the witnesses that the convict-petitioner had no prior knowledge of having drug at the back of the car. It was very much apparent from the charge-sheet, testimony of all the prosecution witnesses that two persons escaped from the car seeing the police and the convict-petitioner was the only person who did not tried to escape seeing the police which clearly establishes that the convict had no prior knowledge of having drug at the back of the car and is no way connected with the alleged offence. In fact, the PW-3 during his cross-examination admitted that the convict did not try to escape and he was sitting at the driving sit. But very surprisingly and most arbitrarily, the learned trial Court completely failed to consider the same and passed the impugned order dated 28.8.2019; As such, the convict-petitioner may kindly be enlarged on bail for ends of justice.
- VII. For that the convict-petitioner is innocent and is no way connected with the alleged occurrence. No possibility to flee away as he is specific resident/address in their locality. If he is enlarged on bail from this Hon'ble Court, he will not misuse the privilege of it and he shall face trial of the aforesaid case under the law. He shall furnish bail bond as per order of this Hon'ble Court and as such, the convict-petitioner may kindly be enlarged on bail for ends of justice.

WHEREFORE, it is most humbly prayed that your lordships would graciously be pleased to issue a Rule calling upon the opposite party to show cause as to why the order dated 7.10.2019 passed by learned Metropolitan Sessions Judge, Dhaka rejecting the prayer for bail of the convict-petitioner in Criminal Appeal No. 1015 of 2019 arising out of Gulshan Police Station Case No. 8 dated 3.04.2005 corresponding to GR No. 197 of 2005 convicting the convict-petitioner under section 22(Ga) of the Madok Drabba Niyantaran Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 2 (two) years and also to pay a fine of Tk. 2,000/- (Two Thousand) in default to suffer simple imprisonment for a period of 01 (One) month more should not be set aside and after hearing the parties,

perusal of the records and case shown if any make the Rule absolute and/ or Pass such other or further order or orders as Your Lordships may deem fit and proper.

AND

Pending hearing of the Rule your Lordships may graciously be pleased to enlarge the convict-petitioner on ad-interim bail in Gulshan Police Station Case No. 8 dated 3.04.2005 corresponding to GR No. 197 of 2005 for ends of justice.

And for this act of kindness, the accused-petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Mohammad Tariqul Islam, son of Mohammad Tazul Islam and Shahanara Begum, House-Gazi Bari, Village Sengua, Post Office-Kachua-3633, Kachua, Palli, Chandpur, aged about- 28 years, date of birth: 20.10.1991, by faith Muslim, by profession- Service, by Nationality- Bangladeshi, National ID No. 19911315894000287 do hereby solemnly affirm and say as follows:

01. That I am the cousin brother of the accused-petitioner and *tadbirkar* of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Zarif Kabir)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Zarif Kabir)

Advocate

Membership # 6731

Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT: TANGAIL.
IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

CRIMINAL MISCELLANEOUS CASE NO. _____ OF 2019

IN THE MATTER OF :

An application for bail under section 498 of the Code of Criminal Procedure, 1898.

AND**IN THE MATTER OF:**

Abdul Jalil, son of late Nazim Uddin Sarkar, Holka Officer, at present- Assistant Settlement Officer, Upazila- Bahbol, District- Hobigonj, Sylhet, and Village- Nabogram, Thana- Gopalpur, District- Tangail.

.... **Accused-Petitioner.**

(In Jail Hajat)

-V E R S U S-

1. The State
2. Anti-Corruption Commission, Head Office, Shegunbagicha, Dhaka.

.... **Opposite Parties.**

AND**IN THE MATTER OF:**

Prayer for bail of the accused-petitioner in Wari (DMP) Police Station Case No. 12 dated 17.07.2012 corresponding to ACC GR No. 116 of 2012 under sections 409/ 217/ 218/ 419/ 420/ 467/ 468/ 471/ 201/ 109 of Penal Code, 1860 along with section 5(2) of Anti Corruption Prevention Act, 1947, now pending before the learned Special Judge, Court No. 6, Dhaka.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion justices of the said Hon'ble Court.

The humble petition on behalf of the accused-petitioner above named most respectfully—

S H E W E T H :

1. That this application has filed for bail of the accused-petitioner in Wari (DMP) Police Station Case No. 12 dated 17.07.2012 corresponding to ACC GR No. 116 of 2012 under sections 409/ 217/ 218/ 419/ 420/ 467/ 468/ 471/ 201/ 109 of Penal Code, 1860 along with section 5(2) of Anti Corruption Prevention Act, 1947, now pending before the learned Special Judge, Court No. 6, Dhaka.
2. That the prosecution case in short is that one Deputy-Director of Anti-Corruption Commission lodged the instant case accusing 9 (nine) persons (not including the instant petitioner) alleging that a trust was created by several persons vide a registered deed No. 1559 dated 6.03.1923 by way of gift and creating a trust board. The trust board was looking after the property situated at Wari Thana, K.M. Das Lane, Ward No. 3, Sutrapur, Dhaka under relevant days and khatians. The trustee were not authorized to sell or transfer the property. Trust fund can only be used for religious purpose. After retirement of said trustees Professor Dr. J.C. Deb, Department of Philosophy, DU was appointed as a trustee who with the help of Dr. Nurul Islam constructed a building thereon. No lease for 99 years was given. The lease deed in question is fake and fabricated. Deed was not registered and no witness was found. During 1971 the building was used as a camp by Rajakar. After liberation war, one accused Moynul Hoque Monju took possession of said and business and lease out the property and collected rent. Since then he is enjoying the property showing the same was taken on lease by creating unregistered deed. Thereafter, he in collusion with other accused persons recorded the property as per the name of NTRS without informing any trustee or member of Volanandogiri Trust. They also created false namjari and jote. They created fabricated registered deed. By this way, they tried to grab the said trust property. This is the case. The case was registered as Wari Police Station Case No. 12 of 17.07.2012. Certified copy of the said First Information Report (FIR) is annexed hereto and marked as **ANNEXURE- "A"**.
3. That in this case, the Anti-Corruption Commission submitted four seizure lists on 10.03.2012 and 14.10.2012. Certified copies of the seizure lists are annexed hereto and marked as **Annexure- "B" Series**.
4. That after investigation the Anti-Corruption Commission submitted charge sheet being No. 136 dated 1.07.2013 against all FIR made accused and also including the petitioner under serial No. 10 though he was not in the FIR and no alamat was seized from him under the said seizure lists. Certified copy of the charge sheet is annexed hereto and marked as **Annexure- "C"**.
5. That all the arrested accused except the petitioner are on bail now. The principal accused Moynul Hoque Monzu is also on bail. The instant petitioner voluntarily surrendered on 12.11.2018 vide order No. 29. Now the case is pending for charge hearing. Copies of order sheet is annexed hereto and marked as **Annexure- "D"**.
6. That on the day of surrender the petitioner prayed for bail but the same was rejected. Thereafter, on 3.01.2019 the petitioner again prayed for bail but the same was rejected too vide order No. 32 dated 10.01.2019. Certified copy of the bail application is annexed hereto and marked as **Annexure- "E"**.

7. That it is submitted that the accused-petitioner is law abiding, peace loving and a permanent citizen of Bangladesh. He hails from a respectable Muslim family.
8. That it is submitted that the petitioner is not a FIR named accused. He has been sent up in charge sheet under serial No. 10 without any cogent reason. As such, the accused-petitioner may kindly be enlarged on bail for ends of justice.
9. That it is submitted that no alamat directly or indirectly was recovered from the petitioner under the seizure lists. As such, the accused-petitioner may kindly be enlarged on bail for ends of justice.
10. That it is submitted that no cogent allegation was made in the charge sheet against the accused petitioner. The petitioner is in no way involved with the allegation of this case. As such, the accused-petitioner may kindly be enlarged on bail for ends of justice.
11. That it is submitted that the accused-petitioner is never-ever involved with such alleged occurrence as mentioned in the aforesaid ejahar. Out of grudge, the accused-petitioner was entangled with the instant case by the instant of a vested quarter. Moreover, the investigation officer of the instant case did not specify any believable reason/cause or any reference of evidence for inserting his name in the aforesaid ejahar, which raises serious doubt about credibility of the allegation against the accused-petitioner; and as such, he may kindly be enlarged on bail.
12. That it is submitted that the accused-petitioner is innocent and he is in no way connected with the alleged occurrence as mentioned in aforesaid charge sheet. He has a specific resident/address in his locality and for that reason, no possibility to flee away. If he enlarged on bail from this Hon'ble Court, he will not misuse the privilege of it and he shall face trial of the aforesaid case under the law. Moreover, he shall furnish bail bond as per order of this Hon'ble Court and as such, the accused-petitioner may kindly be enlarged on bail.
13. That in view of the above facts and circumstances, the accused-petitioner begs to move this application before the Hon'ble Court for bail in the aforesaid case on the following amongst other—

GROUND S

- I. For that the accused-petitioner is law abiding, peace loving and a permanent citizen of Bangladesh. He hails from a respectable Muslim family.
- II. For that the petitioner is not a FIR named accused. He has been sent up in charge sheet under serial No. 10 without any cogent reason. As such, the accused-petitioner may kindly be enlarged on bail for ends of justice.
- III. For that no alamat directly or indirectly was recovered from the petitioner under the seizure lists. As such, the accused-petitioner may kindly be enlarged on bail for ends of justice.
- IV. For that no cogent allegation was made in the charge sheet against the accused petitioner. The petitioner is in no way involved with the allegation of this case. As such, the accused-petitioner may kindly be enlarged on bail for ends of justice.

- V. For that all other arrested accused persons are on bail now. The principal alleged accused Moynul Hoque Manju is also on bail. As such, the accused-petitioner may kindly be enlarged on bail for ends of justice.
- VI. For that the accused petitioner is on bail since 12.11.2018, which is more than three months now. As such, the accused-petitioner may kindly be enlarged on bail for ends of justice.
- VII. For that there is no other allegation or case against the accused petitioner. His PCPR is nill. He has no involved with the FIR made allegations. As such, the accused-petitioner may kindly be enlarged on bail for ends of justice.
- VIII. For that the accused-petitioner is never-ever involved with such alleged occurrence as mentioned in the aforesaid ejahar. Out of grudge, the accused-petitioner was entangled with the instant case by the instant of a vested quarter. Moreover, the investigation officer of the instant case did not specify any believable reason/cause or any reference of evidence for inserting his name in the aforesaid ejahar, which raises serious doubt about credibility of the allegation against the accused-petitioner; and as such, he may kindly be enlarged on bail.
- IX. For that the accused-petitioner is innocent and he is no way connected with the alleged occurrence as mentioned in aforesaid charge sheet. He has a specific resident/address in his locality and for that reason, no possibility to flee away. If he enlarged on bail from this Hon'ble Court, he will not misuse the privilege of it and he shall face trial of the aforesaid case under the law. Moreso, he shall furnish bail bond as per order of this Hon'ble Court and as such, the accused-petitioner may kindly be enlarged on bail.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue a Rule calling upon the opposite party to show cause as to why the accused-petitioner shall not be enlarged on bail in Wari (DMP) Police Station Case No. 12 dated 17.07.2012 corresponding to ACC GR No. 116 of 2012 under sections 409/ 217/ 218/ 419/ 420/ 467/ 468/ 471/ 201/ 109 of Penal Code, 1860 along with section 5(2) of Anti Corruption Prevention Act, 1947, now pending before the learned Special Judge, Court No. 6, Dhaka, on perusal of the cause shown, if any, and after hearing the parties make the rule absolute; and/ or pass such other or further order or orders as your Lordships may deem fit and proper;

AND

Pending hearing of the Rule, the accused-petitioner may kindly be enlarged on *ad-interim* bail in the aforesaid Wari (DMP) Police Station Case No. 12 dated

17.07.2012 corresponding to ACC GR No. 116 of 2012 under sections 409/ 217/ 218/ 419/ 420/ 467/ 468/ 471/ 201/ 109 of Penal Code, 1860 along with section 5(2) of Anti Corruption Prevention Act, 1947, now pending before the learned Special Judge, Court No. 6, Dhaka for ends of justice.

And for this act of kindness the accused-petitioner as in duty bound shall ever pray.

A F F I D A V I T

I,, son of.....address....., aged about, by faith Muslim, by profession- Business, by Nationality-Bangladeshi being National ID No. do hereby solemnly affirm and say as follows—

01. That I am the *tadbirker* of this case being maternal cousin of the accused-petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office,

Advocate

Solemnly affirmed before me by said deponent at the Supreme Court premises, Dhaka on this theth day of, 201 at A.M./P.M.

DEPONENT

The deponent is known to me and identified by me.

Advocate
Membership #
Hall Room No. 2, Supreme
Court Bar Association building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT- RAJSHAHI.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. _____ OF 2019

IN THE MATTER OF:

An application for anticipatory bail under section 498 of the Code of Criminal Procedure, 1898.

-AND-

IN THE MATTER OF:

1. U.S. Begum Rokeya, Wife of late Advocate Mozammel Hoque Talukder
2. Md. Kanak Chowdhury, Son of Noajesh Ali Chowdhury, Both of Village- Nutun Bilsimla, House No. 111/2, Police Station- Rajpara, RMP, District- Rajshahi.

..... **Accused-petitioners.**

(On Surrendered)

-V E R S U S-

The State, represented by the Deputy Commissioner, Rajshahi.

..... **Opposite Party.**

A N D

IN THE MATTER OF :

Prayer for anticipatory bail of the accused-petitioners in Rajpara Police Station Case No. 28 dated 15.10.2019 corresponding to G.R. No. 584 of 2019 under section 302/34 of Penal Code- 1860, now pending in the Court of learned Chief Metropolitan Magistrate, Rajshahi.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Honble Court.

The humble petition of the above named accused-petitioners most respectfully;

S H E W E T H :

1. That the accused-petitioners are law abiding and peace loving citizens of Bangladesh. The accused-petitioner No.1 is wife of the victim Advocate Mozammel Hoque Talukder. The accused-petitioner No.1 is a housewife and the accused-petitioner No.2 is serving for an NGO in different District (Naogaon); and they are no way connected with the alleged allegation as stated in the FIR and there is no objection against them from any end.
2. That the accused-petitioners are duly identified by their engaged lawyer through the *tadbirkar* of the instant application.
3. That on 15.10.2010 at about 20.30 hours one Md. Moinul Islam Talukder, Son of late Abdus Sobhan Talukder of Village- Alaipur, Police Station- Natore Sadar, District- Natore being informant lodged a First Information Report against the accused-petitioners under section 302/34 of Penal Code- 1860. The *tadbirkar* of the accused-petitioners with a much trouble managed to obtain a photocopy of the said First Information Report which is produced below:

প্রাথমিক তথ্য বিবরণী

(নিয়ন্ত্রণ নং- ২৪৩)

থানায় পেশকৃত ফৌজদারী বিধান কোর্সের ১৫৪ নং ধারায় ধর্তব্য অপরাধ সংক্রান্ত প্রাথমিক তথ্য

উপজেলা- রাজপাড়া

জেলা- আরএমপি

নং- $\frac{২৮}{৫৮৪}$

ঘটনা ও সময় ২৭ সেপ্টেম্বর, ২০১৯, সকাল ০৯.০০ ঘটিকা

হইতে দুপুর ০১.০০ টার মধ্যে যে কোন সময়

পেশ করার তারিখ ও সময় :

১৫ অক্টো, ২০১৯

২০.৩০

ঘটনার স্থান, থানা হইতে দূরত্ব ও দিক এবং দায়িত্বাধীন এলাকা নং-

রাজপাড়া থানাধীন নতুন বিলসিমলা বাড়ী নং- ১১১/২, সাং- নতুন বিলসিমলা, ওয়ার্ড নং- ০৩, রাজপাড়া, রাজশাহী, বাংলাদেশ, ০৩ কিমি. উত্তর-পূর্ব দিক, জে এল নং ২০৮, টি.বি. নং-রা, মহানগর, রাজশাহী।

থানা হইতে প্রেরণের তারিখ :

১৬ অক্টো, ২০১৯

বিঃদ্রঃ প্রাথমিক তথ্য অবশ্যই সংবাদদাতার স্বাক্ষর অথবা টিপসহি সম্বলিত এবং লিপিবদ্ধকারী অফিসার কর্তৃক সত্যায়িত হইতে হইবে।

সংবাদদাতা এবং অভিযোগকারীর নাম ও বাসস্থান/ঠিকানা :

মোঃ মঈনুল ইসলাম তালুকদার (৫৫), পিতা-মৃত আব্দুস সোবহান তালুকদার, সাং- আলাইপুর, থানা- নাটোর সদর, জেলা- নাটোর।

আসামীর নাম ও বাসস্থান/ঠিকানা :

১। ইউএস বেগম রোকেয়া (৫৫), স্বামী-মৃত এডভোকেট মোজাম্মেল হক তালুকদার

২। মোঃ কনক চৌধুরী (৩৩), পিতা- নওয়াজেদ আলী চৌধুরী, উভয় সাং- নতুন বিলসিমলা, বাড়ী নং- ১১১/২, থানা-রাজপাড়া, জেলা- রাজশাহী মহানগর।

ধারাসহ অপরাধ এবং লুপ্তিত দ্রব্যাদির সংক্ষিপ্ত বিবরণ :

ধারাঃ ৩০২/৩৪ পেনাল কোড

পরস্পর যোগসাজসে হত্যার অপরাধ।

তদন্ত চালনার কর্ম তৎপরতা এবং বিলম্বে তথ্য রেকর্ড করার কৈফিয়ত :

বাদীর টাইপকৃত লিখিত অভিযোগ প্রাপ্ত হইয়া এজাহারের সকল কলাম পূরণ পূর্বক মামলা রুজু করিলাম। খতিয়ানে নোট করিলাম। বিলম্বের কারণ এজাহারে উল্লেখ আছে। মামলাটি পুলিশ পরিদর্শক (তদন্ত) তদন্তের ব্যবস্থা করিবেন।

(প্রাথমিক তথ্য নিম্নে লিপিবদ্ধ করিতে হইবে)

বাদীর লিখিত/কম্পিউটার টাইপকৃত এজাহার থানায় প্রাপ্ত হইয়া মূল এজাহার হিসাবে গণ্য করিয়া অত্র সহিত সংযুক্ত করা হইল।

মামলাটি আমি নিজেই তদন্ত করিবো।

স্বাঃ/-অস্পষ্ট
১৫/১০/২০১৯
(মোঃ মেহেদী হাসান)
বিপি-৮৩১০১৩৩০১
ইসপেক্টর (তদন্ত)
রাজপাড়া থানা,
আরএমপি, রাজশাহী।

স্বাঃ/-অস্পষ্ট
১৫/১০/২০১৯
(মোঃ শাহাদাত হোসেন খান)
বিপি-৬৬৯০০০৯১৫৮
ইসপেক্টর (নিরস্ত)
রাজপাড়া থানা,
আরএমপি, রাজশাহী।

বরাবর

ভারপ্রাপ্ত কর্মকর্তা
রাজপাড়া থানা
মহানগর, রাজশাহী।

জনাব,

আমি মোঃ মঈনুল ইসলাম তালুকদার (৫৫), পিতা-মৃত আব্দুস সোবহান তালুকদার, সাং- আলাইপুর, থানা- নাটোর সদর, জেলা- নাটোর এই মর্মে আপনার থানায় লিখিত অভিযোগ করিতেছি যে, মৃত ভিকটিম এডভোকেট মোজাম্মেল হক তালুকদার নাটোর জেলা আইনজীবী সমিতির একজন তালিকাভুক্ত সদস্য এবং

আমার আপন ভাই হইতেছে। আসামী (১) ইউএস বেগম রোকেয়া (৫৫), স্বামী-মৃত এডভোকেট মোজাম্মেল হক তালুকদার, (২) মোঃ কনক চৌধুরী (৩৩), পিতা- নওয়াজেদ আলী চৌধুরী, উভয় সাং- নতুন বিলসিমলা, বাড়ি নং-১১১/২, থানা-রাজপাড়া, জেলা- রাজশাহী মহানগর গণ আমার ভাই এডভোকেট মোজাম্মেল হক তালুকদারকে পরস্পর যোগসাজসে হত্যা করিয়াছে। ১নং আসামী ইউএস, বেগম রোকেয়া মৃত ভিকটিম এডভোকেট মোজাম্মেল হক তালুকদারের স্ত্রী হইতেছে। ২নং আসামী মোঃ কনক চৌধুরী ১নং আসামীর বোনের ছেলে হইতেছে। ১নং আসামীর সহিত মৃত ভিকটিমের ৩০ বছর পূর্বে বিবাহ হয়। মূল ভিকটিম ও ১নং আসামী নিঃসন্তান হওয়ায় ২নং আসামী মোঃ কনক চৌধুরীকে পালক পুত্রের মতো তাহারা বাড়ীতে রাখিতেন। সম্প্রতিকালে ১নং আসামী ও ২নং আসামী মৃত এডভোকেট মোজাম্মেল হক তালুকদারের মাঝে মাঝেই তাহার নিজ নামীয় নাটরের জমি-জমা ও অন্যান্য সম্পত্তি আসামীগণের নামে লিখিয়া দেওয়ায় জন্য চাপ সৃষ্টি করিতেন। এমনকি বিভিন্ন সময় মূল ভিকটিমের উপর শারিরীক বলপ্রয়োগ করিতেন। ঘটনার

সূত্রঃ বাদীর লিখিত
অভিযোগ
অদ্য তাং ১৫/১০/১৯ ইং
সময় ২০.৩০
ঘটিকায় প্রাপ্ত
হইয়া রাজপাড়া
থানার মামলা
নং-২৮
তাং ১৫/১০/১৯ইং
ধারা ৩০২/৩৪
দঃ বিঃ র
জু করা হইল।
স্বাঃ/-অস্পষ্ট
১৫/১০/২০১৯
(সীল)

তারিখ অর্থাৎ ২৭/৯/২০১৯ইং দুপুরের দিকে বাদী খবর পান যে তাহার ভাই এডভোকেট মোজাম্মেল হক তালুকদার মৃত অবস্থায় তাহার নতুন বিলসিমলার বাড়ীতে পড়িয়া রহিয়াছে। তাৎক্ষণিক বাদীসহ সাক্ষীগণ দ্রুত নাটোর হইতে রাজশাহী মেডিকেল কলেজ হাসপাতালের লাশ ঘরে পৌছান। সেইখানে বাদী ও সাক্ষীগণ লক্ষ্য করেন যে, মৃত এডভোকেট মোজাম্মেল হক তালুকদার এর গলায় বৃত্তাকারে চিকন কালশিরা দাগ ও থুতনির ডান পাশে অনুমান ২' কাটা দাগ রহিয়াছে। বাদী ও সাক্ষীগণ পরে ঘটনাস্থল ১১১/২ নং বাড়িতে গিয়া স্থানীয় লোকজনের নিকট হইতে শোনেন এবং দেখেন যে, বাড়ির বাহির হইতে তালা ভাঙ্গিয়া মৃত ব্যক্তিকে বাহির করা হইয়াছে। আসামীদ্বয় পরস্পর যোগসাজসে উক্ত ২৭/০৯/২০১৯ ইং তারিখ সকাল ০৯ টা হইতে দুপুর ০১টার মধ্যে যে কোন সময় সম্পত্তির লোভে আমার ভাই এডভোকেট মোজাম্মেল হক তালুকদারের গলায় সরু রশি বা তার দিয়া পেঁচাইয়া শ্বাসরুদ্ধ করিয়া হত্যা করিয়া সিলিং ফ্যানের সহিত লটকাইয়া রাখিয়া বাড়িতে তালা দিয়া সরিয়া যায়। স্থানীয় সাক্ষীগণ উক্ত তারিখে আসামীদ্বয়কে হস্তদস্ত হইয়া সকালের দিকে উক্ত বাড়ি হইতে বাহির হইয়া যাইতে দেখিয়াছে। সাক্ষী (১) এম.এফ. শফিউল ইসলাম তালুকদার (২) এম.এফ. সাইদুল ইসলাম তালুকদার উভয় পিতা-মৃত ফরিদ উদ্দিন তালুকদার সর্ব সাং- আলাইপুর থানা- নাটোর সদর (৩) মোঃ নুর কুতুব উল আলম, পিতা-মৃত আলহাজ্ব আকবর আলী তালুকদার, সাং- বেড়া বাড়ি থানা-সিংড়া সর্ব জেলা- নাটোর (৪) শফিকুর রহমান মামুন, পিতা-মৃত এড. বজলার রহমান সাং চকদেব (কলেজ পাড়া) থানা ও জেলা-নওগাঁ (৫) মোসা. মহসিনা বেগম স্বামী-আনফোর আলী (৬) মোসা. সুরাইয়া আক্তার (১১১/২নং বাসার ভাড়াটিয়া) স্বামী-রফিকুল ইসলাম উভয় সাং- নতুন বিলসিমলা থানা-রাজপাড়া, জেলা-রাজশাহী গণ ঘটনা জানে এবং দেখিয়াছে। এতদ সহ মৃত এডভোকেট মোজাম্মেল হক তালুকদারের সুরতহাল প্রতিবেদনের ফটোকপি, ময়না তদন্ত রিপোর্টের ফটোকপি ও গলায় বৃত্তাকারে বা চক্রাকারে কালশিরা আঘাতের চিহ্ন সম্বলিত ০৬ (ছয়)টি রঙিন স্থির চিত্র সংযুক্ত করা হইল। নিকট আত্মীয়দের সহিত পরামর্শ করিয়া ও সাক্ষীদের নিকট হইতে খোঁজ খবর লওয়ার কারণে সময় ক্ষেপন হওয়ায় মামলা দায়ের করিতে সামান্য বিলম্ব হইল।

অতএব জনাব অত্র অভিযোগটি গ্রহণ করতঃ আসামীদের গ্রেপতার করিয়া আইনানুগ ব্যবস্থা গ্রহণ করিতে মর্জি হয়।

নিবেদক

স্বাঃ অস্পষ্ট

তাং ১৫/১০/১৯ইং

মো. মঈনুল ইসলাম তালুকদার

পিতা-মৃত আব্দুস সোবহান তালুকদার

সাং- আলাইপুর

থানা- নাটোর সদর

জেলা- নাটোর।

4. That the aforesaid ejahar was recorded as Rajpara Police Station Case No. 28 dated 15.10.2019 corresponding to G.R. No. 584 of 2019 under section 302/34 of Penal Code-1860 and one Md. Shahadat Hosen Khan, Officer-in-Charge as investigating officer.
5. That it is stated that the case is still under investigation and no police report has yet been submitted in this case.
6. That it is stated that the accused no. 1 is an old lady who is the wife of the victim. They don't have any children. They were fully dependent on each other. The in-laws family members of the accused no. 1 wanted to grab the properties of the accused no. 1 and the victim. They warned the accused no. 1 and the victim several times for giving their properties, but when they refused they used to torture them occasionally. On the date of occurrence, the accused no. 1 was not in the place of occurrence and visited his sister's

house, and after that she could not return due to this case. Filing this case, the informant and related persons looted the house of the accused no. 1, took away all their ornaments and property related documents. Now, the accused no. 1 is taking shelter here and there being ousted from her homestead. The accused no. 2 is a service holder in a NGO. He has no criminal record. He is no way connected with the FIR stated allegation. FIR was filed long after the date of occurrence.

7. That it is submitted that there is no specific allegation brought against them and they have falsely been implicated with the instant case out of grudge and previous enmity. Hence, the accused-petitioners may kindly be granted anticipatory bail.
8. That it is stated that there was a long standing enmity prevailing on between the party due to land disputes as well as some personal clashes and the informant lodged the instant case against the accused-petitioners out of previous enmity only for harassment. Hence, the accused-petitioners may kindly be granted anticipatory bail.
9. That it is submitted that the allegations against the accused-petitioners brought in the FIR are out and out false, fabricated and misconceived. The allegations do not disclose any offence under section 302/34 of Penal Code- 1860. The informant has created a story only to harass the accused-petitioners. Hence, the accused-petitioners may kindly be granted on anticipatory bail.
10. That it is submitted that after lodging of the F.I.R. members of the law enforcing agencies have been raiding the residences of the accused-petitioners. The informant and his associates are very much influential and for that reason the accused-petitioners apprehend that they may be subjected to torture by the members of law enforcing agency in the event of their arrest. Hence, the accused-petitioners may kindly be granted on anticipatory bail.
11. That it is submitted that the accused-petitioners apprehend that they would not be dealt in accordance with law in the event of their surrender before the learned Court below since the case is under section 302 and others section of the Penal Code. Hence, the accused-petitioners may kindly be granted anticipatory bail.
12. That it is submitted that the accused-petitioners are permanent citizens of Bangladesh. They shall not flee away if they are granted anticipatory bail. The accused-petitioners shall furnish adequate surety as per direction of this Hon'ble Court. Hence, the accused-petitioners may kindly be granted on anticipatory bail.
13. That the accused-petitioners did not filed any other application under section 498 of the Code of Criminal Procedure, 1898 for anticipatory bail before the Hon'ble High Court Division.
14. That in the premises as aforesaid the petitioners have no other alternative but to surrender before this Hon'ble Court for anticipatory bail on the following amongst other—

GROUND S

- I. For that there is no specific allegation brought against them and they have falsely been implicated with the instant case out of grudge and previous enmity. Hence, the accused-petitioners may kindly be granted anticipatory bail.
- II. For that there was a long standing enmity prevailing on between the party due to land disputes as well as some personal clashes and the informant lodged the instant case against the accused-petitioners out of previous enmity only for harassment. Hence, the accused-petitioners may kindly be granted anticipatory bail.
- III. For that the allegations against the accused-petitioners brought in the FIR are out and out false, fabricated and misconceived. The allegations do not disclose any offence under section 302/34 of Penal Code- 1860. The informant has created a story only to harass the accused-petitioners. Hence, the accused-petitioners may kindly be granted on anticipatory bail.
- IV. For that after lodging of the F.I.R. members of the law enforcing agencies have been raiding the residences of the accused-petitioners. The informant and his associates are very much influential and for that reason the accused-petitioners apprehend that they may be subjected to torture by the members of law enforcing agency in the event of their arrest. Hence, the accused-petitioners may kindly be granted on anticipatory bail.
- V. For that the accused-petitioners apprehend that they would not be dealt in accordance with law in the event of their surrender before the learned Court below since the case is under section 302 and others section of the Penal Code. Hence, the accused-petitioners may kindly be granted anticipatory bail.
- VI. For that the accused no. 1 is an old lady who is the wife of the victim. They don't have any children. They were fully dependent on each other. The in-laws family members of the accused no. 1 wanted to grab the properties of the accused no. 1 and the victim. They warned the accused no. 1 and the victim several times for giving their properties, but when they refused they used to torture them occasionally. On the date of occurrence, the accused no. 1 was not in the place of occurrence and visited his sister's house, and after that she could not return due to this case. Filing this case, the informant and related persons looted the house of the accused no. 1, took away all their ornaments and property related documents. Now, the accused no. 1 is taking shelter here and there being ousted from her homestead. The accused no. 2 is a service holder in a NGO. He has no criminal record. He is no way connected with the FIR stated allegation. FIR was filed long after the date of occurrence. Hence, the accused-petitioners may kindly be granted anticipatory bail.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue a Rule calling upon the opposite party to show cause as to why the accused-petitioners should not be granted anticipatory bail in Rajpara Police Station Case No. 28 dated 15.10.2019 corresponding to G.R. No. 584 of 2019

under section 302/34 of Penal Code- 1860, now pending in the Court of learned Chief Metropolitan Magistrate, Rajshahi and after perusal of the record and cause shown, if any, and after hearing of the parties make the Rule absolute and/ or pass such other or further order or orders as your Lordships deem fit and proper.

AND

Pending hearing of the Rule your lordships be further pleased to enlarge the accused-petitioners on ad-interim anticipatory bail in the aforesaid case for the ends of justice.

And for this act of kindness the petitioners as in duty bound shall ever pray.

A F F I D A V I T

I, Md. Raisuddin, Son of Sakawat Hossain and mother's name- Begum of Village- Hiron, Post Office- Hiron-8110, Police Station- Kotwalipara, District- Gopalganj, aged about- 34 years, by faith Muslim, by profession- Business, by Nationality- Bangladeshi, National ID No. 19853515131000025 do hereby solemnly affirm and say as follows:

1. That I am the of the accused-petitioner No.1 and *tadbirkar* of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made herein above are true to the best of my knowledge and belief.

Prepared in my office.

(Zarif Kabir)

Advocate

Solemnly affirmed before me this the .. th
day of October, 2019.

Deponent

The deponent is known to me and
identified by me.

(Zarif Kabir)

Advocate

Membership # 8696

Hall No.2, Supreme Court Bar Building, Shahbagh, Dhaka.

Mobile No.01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

SampleDISTRICT: MOULAVIBAZAR

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. _____ OF 2021

IN THE MATTER OF:

An application for anticipatory bail under section 498 of the Code of Criminal Procedure, 1898.

AND**IN THE MATTER OF:**

Md. Amru Mia alias Md. Atikur Rahman Amru, Son of late Aklur Mia, Address- Collage Road, Police Station-Sreemangal, District- Moulavibazar.

..... **Accused-Petitioner.**

(On Surrender)

-V E R S U S-

The State

..... **Opposite Parties.**

AND**IN THE MATTER OF:**

Prayer for anticipatory bail of the accused-petitioner in Sreemangal Police Station Case No. 05 dated 02.03.2021 under Sections 341/323/325/307/379/506 (2) of the Penal Code, 1860, now pending before the Court of learned Chief Judicial Magistrate, Moulavibazar.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion justices of the said Hon'ble Court.

The humble petition on behalf of the accused petitioner most respectfully—

S H E W E T H:

1. That the accused-petitioner is law abiding and peace loving citizen of Bangladesh and the informant and the accused-petitioner are two brothers. The accused-petitioner has only 4 (four) girls. The informant has one son and one daughter. They want to grab the properties of the petitioner. For that reason, they are leaving no stone unturned to hamper the life of the petitioner. The accused-petitioner is duly identified in person by the learned Advocate at her chamber, and the petitioner is known to him.
2. That one Md. Kazal Mia, son of late Aklu Mia, of village- Devbari Road, Police Station- Sreemangal, District- Moulavibazar being the informant filed this case under sections 341/323/325/307/379/506(2) of the Penal Code, 1860 with Sreemangal Police Station where the case was registered as Sreemangal Police Station Case No. 05 dated 02.03.2021 and the tadbirkar somehow collected a photocopy of FIR which is as follows-

বি.পি. ফরম নং-২৭**বাংলাদেশ ফরম নং- ৫৩৫৬****CDMS CODE-1H3CJ****প্রাথমিক তথ্য বিবরণী****স্মাঃ ১২১১ (৩)/১****(নিয়ন্ত্রণ নং- ২৪৩)****০৩/০৩/২০২১****পেশকৃত ফৌজদারী বিধান কোষের ১৫৪ নং ধারায় ধর্তব্য অপরাধ সংক্রান্ত প্রাথমিক তথ্য****উপজেলা- শ্রীমঙ্গল****জেলা- মৌলভীবাজার****নং- ৫/৭৯****ঘটনা ও সময় ২৩ ফেব্রু, ২০২১ম বিকাল অনুমান ৩.০০ ঘটিকা****পেশ করার তারিখ ও সময় :****২৭ মার্চ, ২০২১, ২৩.০৫ ঘটিকা****ঘটনার স্থান, থানা হইতে দূরত্ব ও দিক এবং দায়িত্বাধীন এলাকা নং-**

শ্রীমঙ্গল থানাধীন চৌমুহনা সাকিনস্থ হোটেল বিরতির ও ডাচ বাংলা বুথের সামনে, শ্রীমঙ্গল চৌমুহনা, ওয়ার্ড নং- ৮, শ্রীমঙ্গল, মৌলভীবাজার, বাংলাদেশ, আধা কিমি. দক্ষিণ দিক, শ্রীমঙ্গল পৌরসভা ৮ নং ওয়ার্ড।

থানা হইতে প্রেরণের তারিখ :**০৩ মার্চ, ২০২১**

বিঃ দ্রঃ- প্রাথমিক তথ্য অবশ্যই সংবাদদাতার স্বাক্ষর অথবা টিপসহি সম্বলিত এবং লিপিবদ্ধকারী অফিসার কর্তৃক সত্যায়িত হইতে হইবে।

সংবাদদাতা এবং অভিযোগকারীর নাম ও বাসস্থান/ঠিকানা :

(CLBSR) মোঃ কাজল মিয়া (৪১), পিতা- মৃত আকলু মিয়া, স্থায়ী গ্রাম : দেববাড়ী রোড, উপজেলা/ থানা- শ্রীমঙ্গল, মৌলভীবাজার, বাংলাদেশ।

আসামীর নাম ও বাসস্থান/ঠিকানা :

- ১। (CLATX) মোঃ আমরু মিয়া (৫৫) পিতা- মৃত আকলু মিয়া, স্থায়ী গ্রাম- কলেজ রোড, উপজেলা/ থানা- শ্রীমঙ্গল, মৌলভীবাজার, বাংলাদেশ সহ (CLB6V) অজ্ঞাতনামা ২-৩ জন।

ধারাসহ অপরাধ এবং লুণ্ঠিত দ্রব্যাদি সংক্ষিপ্ত বিবরণ :

৩৪১/৩২৩/৩২৫/৩৬০৭/৩৭৯/৫০৬(২)পেনাল কোড- ১৮৬০;

পথরোধ করিয়া প্রাণে হত্যার উদ্দেশ্যে মারপিট করিয়া সাধারণ ও হাড়ভাঙ্গা জমখ করত: চুরি ও হুমটিক প্রদানের অপরাধ, চোরাই মূল্য- ১,২০,০০০.- টাকা, উদ্ধার নাই।

তদন্ত চালনার কর্ম তৎপরতা এবং বিলম্বে তথ্য রেকর্ড করার কৈফিয়ত :

বাদীর টাইপকৃত লিখিত অভিযোগ প্রাপ্ত হইয়া এজাহার কলাম পূরণপূর্বক মামলা রজু করিলাম। খতিয়ানে নোট করিলাম। বিলম্বের কারণ এজাহারে গর্ভে উল্লেখ আছে। এসআই (নিঃ/)/ দূর্জয় সরকার, বিপি- ৯২২০২২৬৪১২ মামলাটি তদন্ত করিবেন।

মামলার ফলাফল

(প্রাথমিক তথ্য নিম্নে লিপিবদ্ধ করিতে হইবে)

বাদীর লিখিত/কম্পিউটার টাইপকৃত এজাহার থানায় প্রাপ্ত হইয়া মূল এজাহার হিসাবে গণ্য করিয়া অত্র সহিত সংযুক্ত করা হইল।

সাব-ইন্সপেক্টর (নিরস্ত্র) দূর্জয় সরকার- ৩৮৮০২২৬৪১২ (মোবাইল নং- 018122708166) মামলাটি তদন্ত করিবেন।

নোট : তথ্যের পাদদেশে সংবাদদাতার স্বাক্ষর অথবা টিপসহি থাকিতে হইবে।

বরাবর
অফিসার ইনচার্জ
শ্রীমঙ্গল থানা, মৌলভীবাজার।

স্বাঃ/-অস্পষ্ট
০৮/০৩/২০২০
(মোঃ আব্দুছ ছালেথ)
বিপি-৭৫০০০৯৪৮৮৩
অফিসার ইনচার্জ
শ্রীমঙ্গল, মৌলভীবাজার

বিষয় : অভিযোগ।

অভিযোগকারী : মোঃ কাজল মিয়া (৪১) পিতা- মৃত আকুল মিয়া, সাং- দেববাড়ী রোড, থানা- শ্রীমঙ্গল, জেলা- মৌলভীবাজার।

বিবাদী : ১। মোঃ আমরু মিয়া (৫৫) পিতা- মৃত আকুল মিয়া, সাং- কলেজ রোড, থানা- শ্রীমঙ্গল, জেলা- মৌলভীবাজার সহ অজ্ঞাতনামা ২/৩ জন।

সাক্ষী : ১। বাদী, ২। ফারজানা আক্তার কলি (৩৫) স্বামী- মোঃ কাজল মিয়া, সাং দেববাড়ী ৩। মোঃ মল্লান মিয়া (৫০) (সিকিউরিটি) পিতা- অজ্ঞাত, ৪। হেলাল দেওয়ান (৪২) পিতা- অজ্ঞাত, সাং- শাহীবাগ, ৫। মোঃ ইমরান (১৯) পিতা- মোঃ কাজল মিয়া, সাং দেববাড়ী, সর্বথানা- শ্রীমঙ্গল, জেলা- মৌলভীবাজার সহ আরো অনেকে।

ঘটনার তারিখ ও সময় : ২৩/০২/২০২১ ইং তারিখ বিকাল অনুমান ০৩.০০ ঘটিকা।

ঘটনাস্থল : শ্রীমঙ্গল থানাধীন চৌমুহনা সাকিনস্থ হোটেল বিরতির ও ডাচ বাংলা বুথের সামনে।

জনাব,

যথাবিহীত সম্মান প্রদর্শন পূর্বক নিবেদন এই যে, আমি নিম্নস্বাক্ষরকারী মোঃ কাজল মিয়া আপনার থানায় উপস্থিত হইয়া উপরোক্ত বিবাদীগণের বিরুদ্ধে এই মর্মে অভিযোগ দায়ের করিতেছি যে, আমি একজন আইনমান্যকারী ব্যবসায়ী লোক হই। বিবাদী মোঃ আমরু মিয়া আমার আপন বড় ভাই হয়। জমিজমা ও পারিবারিক বিভিন্ন লেনদেনের বিষয়াদি নিয়া বিবাদীর সহিত আমার বিরোধ চলিয়া আসিতেছে। বিদ্যমান বিরোধের বিষয়ে একাধিকবার বিচার সালিস হইলেও বিবাদী সালিস বিচার মানে না। বিগত ০৩ মাস পূর্বে উভয় পক্ষের আত্মীয় স্বজন ও স্থানীয় গণ্যমান্য ব্যক্তিবর্গের মধ্যস্থতায় বিরোধের বিষয়টি মীমাংসার জন্য সালিস বিচারে গণ্যমান্য ব্যক্তিবর্গের প্রদত্ত সিদ্ধান্ত বিবাদী মানিয়া নিয়া বিষয়টি সমাধান করিবে বলিয়া যায় এবং পরবর্তীতে গণ্যমান্য ব্যক্তিবর্গের সিদ্ধান্ত উপেক্ষা করিয়া বিচার মানে না বলিয়া জানাইয়া দেয়। উক্ত ঘটনার পর হইতে বিবাদী মোঃ আমরু মিয়া আমার ক্ষতি সাধনের প্রচেষ্টায় লিপ্ত রহিয়াছে। ঘটনার তারিখ ২৩/০২/২০২১ বেলা অনুমান ০২.০০ ঘটিকার সময় আমি আমার স্ত্রী ২ নং সাক্ষীকে নিয়া বুরো বাংলাদেশ শ্রীমঙ্গল শাখায় যাই এবং ৫০,০০০- (পঞ্চাশ হাজার) টাকা উত্তোলন করিয়া আমার নিকট থাকা ১০০০ টাকা নোটের ৭০,০০০/- টাকা সর্বমোট ১,২০,০০০/- (এক লক্ষ বিশ হাজার) টাকা নিয়া আমার স্ত্রী সহ নিজ বাড়ির উদ্দেশ্যে রওয়ানা হই। বেলা অনুমান ০৩.০০ ঘটিকার সময় শ্রীমঙ্গল থানাধীন চৌমুহনা সাকিনস্থ হোটেল বিরতির ও ডাচ বাংলা বুথের সামনে পৌঁছিলে বিবাদী মোঃ আমরু মিয়া অজ্ঞাতনামা ২/৩ জন বিবাদীদের সহ হাতে লাঠিসোটা নিয়া ঘটনাস্থলে ওতপাতিয়া থাকে। বিবাদীরা

বাদীর টাইপকৃত
স্বাক্ষরিত
অভিযোগ অদ্য
০২/০৩/২০২১
ইং তারিখ
২৩.০৫ ঘটিকায়
থানায় প্রাপ্ত
হইয়া শ্রীমঙ্গল
থানার মামলা
নং ০৫ তারিখ
০২/০৩/২০২১
ইং দ্বারা
৩৪১/৩২৩/৩২
৫/৩০৭/৩৭৯/৫
০৬(২) পেনাল
কোড রঞ্জু করা
হইল।

আমাদের বহনকৃত রিকশা এর পথরোধ করিয়া আমাকে টানা হেঁচড়া করতঃ রিকশা হইতে নামাইয়া খুন করার উদ্দেশ্যে ১নং বিবাদীর হাতে থাকা কাঠের রোল দিয়া মাথা লক্ষ্য করিয়া বারি মারে আমি প্রাণ রক্ষার্থে বাম হাত ফিরাইলে আমার বাম হাতের কজির উপর পড়িয়া মারাত্মক হাড়ভাঙ্গা জখম হয়। বিবাদীরা আমাকে এলোপাতাড়িভাবে মারপিট করিয়া আমার মাথায় পিঠে ও শরীরের বিভিন্ন স্থানে মারাত্মকভাবে নীলাফুলা জখম করে। একপর্যায়ে বিবাদী মোঃ আমরু মিয়া আমাকে জাপটাইয়া ধরিয়া সড়কের পাশে থাকা ডাচ বাংলা ব্যাংকের এটিএম বুথের গ্লাসের উপর ফেলিয়া দিলে এটিএম বুথের গ্লাস ভাঙ্গিয়া আমার পিঠে বিদ্ধ হইয়া মারাত্মক কাটা জখম হয়। আমি মাটিতে পরিয়া গেলে বিবাদী মোঃ আমরু মিয়া আমার প্যাণ্টের দুই পকেটে থাকা ব্যবসার ১,২০,০০০/- (এক লক্ষ বিশ হাজার) টাকা জোরপূর্বক নিয়া যায়। আমার স্ত্রী ২নং সাক্ষী বাধা দিলে বিবাদী মোঃ আমরু মিয়া আমার স্ত্রীকে ধাক্কা মারিয়া রাস্তার পাশে ড্রেনের উপর ফেলিয়া দেয়। ঘটনা দেখিয়া সাক্ষী হেলাল মিয়া সহ আশপাশের লোকজন আগাইয়া আসিলে বিবাদীরা উক্ত ঘটনায় বিচার প্রার্থী হইলে কিংবা মামলা মোকদ্দমা করিয়া আমাকে খুন করিয়া লাশ গুশ করিয়া ফেলিবে বলিয়া হুমকি দেয়। সাক্ষী হেলাল মিয়া সহ মানিত সাক্ষীগণ আমাকে উদ্ধার করিয়া শ্রীমঙ্গল উপজেলা স্বাস্থ্য কমপ্লেক্সে নিয়া চিকিৎসার ব্যবস্থা করে। আমার শরীরের জখম গুরুতর হওয়ায় কর্তব্যরত চিকিৎসক আমাকে মৌলভীবাজার সদর হাসপাতালে রেফার করে। বিবাদীদের এইরূপ হুমকির কারনে আমি আমার পরিবার পরিজন নিয়া চরম নিরাপত্তাহীনতায় আছি। স্থানীয় গণ্যমান্য ব্যক্তিবর্গকে অবহিত করিয়া এবং চিকিৎসাধীন থাকায় আমার ছেলে ইমরান রহমানের মাধ্যমে থানায় অভিযোগ প্রেরণ করিলাম। চিকিৎসাকাজে ব্যস্ত থাকায় অভিযোগ দায়েরে বিলম্ব হইল। আমার সাক্ষী আছে। সাক্ষীগণ ঘটনার প্রমাণ করিবে।

অতএব, মহোদয় সমিপিবে আবেদন আমার উক্ত অভিযোগের বিষয়ে সুবিবেচনায় আসামীদের বিরুদ্ধে আইনগত ব্যবস্থা করিয়া বিবাদীদের বিরুদ্ধে আইনানুগ ব্যবস্থা গ্রহণ করিতে আপনার মর্জি হয়।

বিনীত

(মোঃ কাজল মিয়া)

মোবাইল নং- ০১৬২৩-২০১০৫১

3. That on the day of occurrence, the accused-petitioner was crossing the street with his younger daughter. Upon a sudden attack by the informant, he fell down on a fast track booth which caused the breaking of three glasses of the booth and a fracture on his nose and backbone. Police came there and saved him from the attack of the informant. Police took him to hospital. There are medical reports from Sreemangal Upazilla Health Complex. On that occurrence, the accused-petitioner lodged Sreemangal Police Station Case No. 4 dated 02.03.2021. He filed the case on the date of occurrence on 23.02.2021 under sections 306/326/506 of Penal Code, 1860 but Police somehow in collusion with the informant of the present case registered the case on 02.03.2021 under sections 323/324/506(2) of Penal Code. It shows the power and malafide alliance between the informant and police. It also shows the helplessness of the petitioner. The FIR story of the Sreemangal Police Station Case No. 4 dated 02.03.2021 are as follows—

বরাবর,
অফিসার ইনচার্জ,
শ্রীমঙ্গল থানা, মৌলভীবাজার।

বিষয় : অভিযোগ।

জনাব,

বিনীত নিবেদন এই যে, আমি নিম্নস্বাক্ষরকারী মোঃ আতিকুর রহমান আমরু (৫০), পিতা- মৃত আকলু মিয়া, সাং- উত্তরসুর বর্তমান সাং- কলেজ থানা- শ্রীমঙ্গল, জেলা- মৌলভীবাজার। আপনার থানায় হাজির হইয়া বিবাদী ১। মো: কাজল মিয়া (৩৮) পিতা- মৃত আকলু মিয়া, ২। কলি বেগম (৩২) স্বামী- মো: কাজল মিয়া, উভয় সাং- উত্তর উত্তরসুর, বর্তমান সাং-দেববাড়ী রোড, থানা- শ্রীমঙ্গল, জেলা- মৌলভীবাজারদের বিরুদ্ধে এই মর্মে অভিযোগ দায়ের করিতেছি যে, আমি সহজ সরল আইন মান্যকারী লোক। পক্ষান্তরে বিবাদীদ্বয় অন্যায় অত্যাচারী, সন্ত্রাসী, দাংগাবাজ ও পরধনলোভী প্রকৃতির লোক। ১নং বিবাদী আমার ভাই এবং ২ নং বিবাদী তাহার স্ত্রী হয়। বিবাদীদের নিকট হইতে আমি আমার স্ত্রী ও চার মেয়ে সন্তান নিয়া পৃথকভাবে বসবাস করি। কিন্তু আমার কোন ছেলে সন্তান না থাকায় ১ নং বিবাদী তাহার স্ত্রী ২নং বিবাদীসহ বিভিন্ন সময় আমাকে মারপিটসহ খুন করার হুমকি দিয়া আসিতে থাকে। ঘটনার তারিখ ও সময় ২৩/০২/২০২১ খ্রি: তারিখ অনুমান ০৩.০০ ঘটিকায় আমি শ্রীমঙ্গল শহরস্থ সোনালী মার্কেট হইতে পায়ে হাটিয়া কলেজ রোড আমার বাসায় যাওয়ার পথে শ্রীমঙ্গল চৌমুহনায় আসামাত্র বর্ণিত বিবাদীদ্বয় মৌলভীবাজার রোড হইতে একটি রিকসা যোগে আসিয়া আমাকে চৌমুহনায় দেখামাত্র ১নং বিবাদী রিকসা হইতে নামিয়া আমাকে আক্রমণ করে। আমি প্রাণ রক্ষার্থে দৌড়িয়া নিকটবর্তী ডাচ বাংলা ব্যাংকের এটিএম বুথের ভিতর প্রবেশ করিতে চাহিলে বিবাদীদ্বয় আমার পিছু ধাওয়া করিয়া ডাচ বাংলা ব্যাংকের এটিএম বুথের সামনে আমাকে ধরিয়া এলাপাতারীভাবে কিল ঘুষি ও লাথি মারে, বুথের গ্লাসের উপরে ফেলিয়া গ্লাস ভাঙ্গিয়া ফেলে, আমার নাকে মুখে রক্তাক্ত জখমসহ শরীরের বিভিন্ন স্থানে ফুলা জখম করে। আমার ডাক চিৎকারে ডাচ বাংলা ব্যাংকের এটিএম বুথের কর্মরত লোক আব্দুল মান্নানসহ আশ-পাশের লোকজন আগাইয়া আসিলে বিবাদীদ্বয় আমাকে যে কোন সময় খুন করিয়া আমার লাশ গুম করিয়া ফেলার হুমকি দিয়া চলিয়া যায়। এর পর আমি আশেপাশের কতক লোকদের সহায়তায় শ্রীমঙ্গল উপজেলা হাসপাতালে আসিয়া চিকিৎসা গ্রহণ করি। সাক্ষীগনসহ এলাকার লোকজন সমস্ত ঘটনা জানেন ও দেখেন। তদন্তে আরো সাক্ষী প্রমাণ পাওয়া যাইবে। স্থানীয় ভাবে নিষ্পত্তির অপেক্ষায় অভিযোগ দায়ের করিতে বিলম্ব হইল।

অতএব, উপোক্ত বিষয়ে বিবাদীদের বিরুদ্ধে আইনানুগ ব্যবস্থা গ্রহণ করিতে মর্জি হয়।

বিনীত

(মোঃ আতিকুর রহমান আমরু)

০১৭১১০৭৫৮৫৪

4. That it is stated that the case is being investigated by an officer of the Police, and no investigation report has been submitted yet by the Investigating Officer.
5. That it is stated that the police raided the house of accused-petitioner on several occasions and lastly on 5.3.2021 when he was not present in his residence, and subsequently knowing about the police raid, the accused-petitioner has decided to surrender before your Lordships.
6. That it is stated that the accused-petitioner is the full brother of the informant and he has 4 (four) daughters and no son and from a long period of time the informant trying to grab properties of the petitioner and in past several occasions the informant tried to assault the accused-petitioner as well as intimidated to kill him and regarding this the accused-petitioner filed GD against the accused-petitioner. Therefore the accused-petitioner is humbly praying for bail.
7. That it is stated that out of the selfsame incident there is case counter case between the informant and accused-petitioner. Since non bailable section involved in this case and there is chance of being arrest and torture at anytime, therefore the accused-petitioner is humbly praying for bail.
8. That it is submitted that the allegations brought in the FIR are out and out false, fabricated and misconceived. The allegations do not disclose any offence under sections 341/323/325/307/379/506 (2) of the Penal Code, 1860 of the Penal Code, 1860. The informant has created a story against the accused-petitioner only to harass and humiliate her. Hence, the accused-petitioner may kindly be enlarged on anticipatory bail.
9. That it is submitted that after lodging of the F.I.R. members of the law enforcing agencies have been raiding the residence of the accused-petitioner. The informant has been given shelter by local leaders of present ruling party and for that reason, the accused-petitioner apprehend that he may be subjected to torture by the members of law enforcing agency after their arrest. Hence, the accused-petitioner may kindly be enlarged on anticipatory bail.
10. That it is submitted that regarding the selfsame incident the informant filed case on the date of occurrence on 23.02.2021 under sections 306/326/506 of Penal Code, 1860 but Police somehow in collusion with the informant of the present case registered the case on 02.03.2021 under sections 323/324/506(2) of Penal Code. It shows the power and malafide alliance between the informant and police. It also shows the helplessness of the petitioner. Hence, the accused-petitioner may kindly be enlarged on anticipatory bail.
11. That it is submitted that the informant and his allies are very powerful and for that reason, the accused-petitioner apprehend that he may not get justice from the learned court below if she surrender there for bail. Hence, the accused-petitioner may kindly be enlarged on anticipatory bail.
12. That it is submitted that the accused-petitioner is permanent citizen of Bangladesh. She will not flee away if he is granted anticipatory bail. The petitioner shall furnish adequate surety as per direction of this Hon'ble Court. Hence, the accused-petitioner may kindly be enlarged on anticipatory bail.

13. That it is stated that the accused-petitioner never filed or moved any application for anticipatory bail before any other bench of the High Court Division in connection with the present case.
14. That in view of the above facts and circumstances, the accused-petitioner begs to move this application for anticipatory bail before this Hon'ble Court on the following amongst other-

-G R O U N D S-

- I. For that after lodging of the F.I.R. members of the law enforcing agencies have been raiding the residence of the accused-petitioner. The informant has been given shelter by local leaders of present ruling party and for that reason, the accused-petitioner apprehend that he may be subjected to torture by the members of law enforcing agency after their arrest. Hence, the accused-petitioner may kindly be enlarged on anticipatory bail.
- II. For that regarding the selfsame incident the informant filed case on the date of occurrence on 23.02.2021 under sections 306/326/506 of Penal Code, 1860 but Police somehow in collusion with the informant of the present case registered the case on 02.03.2021 under sections 323/324/506(2) of Penal Code. It shows the power and malafide alliance between the informant and police. It also shows the helplessness of the petitioner. Hence, the accused-petitioner may kindly be enlarged on anticipatory bail.
- III. For that the informant and his allies are very powerful and for that reason, the accused-petitioner apprehend that he may not get justice from the learned court below if she surrender there for bail. Hence, the accused-petitioner may kindly be enlarged on anticipatory bail.
- IV. For that the accused-petitioner is permanent citizen of Bangladesh. She will not flee away if he is granted anticipatory bail. The petitioner shall furnish adequate surety as per direction of this Hon'ble Court. Hence, the accused-petitioner may kindly be enlarged on anticipatory bail.

WHEREFORE it is most humbly prayed that your Lordships would graciously be pleased to issue a Rule calling upon the opposite party to show case as to why the accused-petitioner shall not be enlarged on anticipatory bail in Sreemangal Police Station Case No. 05 dated 02.03.2021 under Sections 341/323/325/307/379/506(2) of the Penal Code, 1860, now pending before the Court of learned Chief Judicial Magistrate, Moulavibazar, and on perusal of the cause shown, if any and after hearing the parties make the rule absolute and/ or pass such other or further order or orders as your Lordships deem fit and proper.

AND

Pending hearing of the Rule, the accused-petitioner may kindly be granted *ad-interim* anticipatory bail in the aforesaid case.

And for this act of kindness the petitioners as in duty bound shall ever pray.

AFFIDAVIT

I, Rumana Akter Juma, daughter of Atikur Rahman Amru and Golshan Akter Laile of House / Holding- 89/1, Village/Road- Basir Uddin Road, Dhanmondhi, Police Station- Dhanmondi, District- Dhaka, aged about- 26, by faith Muslim, by profession- student, by Nationality- Bangladeshi, National ID No. 5557655585 do hereby solemnly affirm and say as follows :

01. That I am the daughter of the accused-petitioner and *tadbirker* of this case of the petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made hereinabove are true to the best of my knowledge and the rests are submissions before the Hon'ble Court.
03. That the petitioner earlier did not make any application to the same effect or with the same object.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2021
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate

Membership #

Hall Room No.2, Supreme
Court Bar Association Building
Mobile :

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

Sample**DISTRICT: DHAKA**

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. _____ OF 2019

IN THE MATTER OF:

A petition of appeal under Section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

(Against Order)

AND**IN THE MATTER OF:**

Md. Anis Bepari, Son of late Alam Bepari and Amena Khatun, of House No. 74, West Islambagh (Mona Hajir Bari) Level 5, Police Station- Chalkbazar, District- Dhaka.

----- **Accused-appellant.**

(In Jail Hajat)

VERSUS

1. The State
2. Most. Tania Akter, daughter of late Ali Akbar, wife of Md. Anis Bepari, of Village- West Islamnagar (Mojibar Ghat), House of Aziz Driver, Post Office- Ashrafabad, Police Station- Kamrangirchar, District- Dhaka. (Complainant)

..... **Respondents.**

AND**IN THE MATTER OF**

Order No. 8 dated 23.09.2019 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka, rejecting an application for bail of the accused-appellant in Nari-O-Shishu Tribunal Case No. 254 of 2019 arising out of Nari-O-Shishu Petition Case No. 146 of 2019 under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, now pending before the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition of the accused-appellant most respectfully—

S H E W E T H :

1. That the accused-appellant filed this appeal challenging the Order No. 8 dated 23.09.2019 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka, rejecting an application for bail of the accused-appellant in Nari-O-Shishu Tribunal Case No. 254 of 2019 arising out of Nari-O-Shishu Petition Case No. 146 of 2019 under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, now pending before the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka.
2. That the accused-appellant is law abiding and peace loving citizen of Bangladesh and he hails from a respectable Muslim family.
3. That the prosecution case in brief is that on 19.06.19, the complainant filed a complaint petition along with an affidavit against the accused under section 11(Ga) of the Nari O Shishu Nirjatan Daman Ain, 2000 in Nari O Shishu Nirjatan Daman Tribunal 4, Dhaka claiming *inter alia* that the complainant got married with the accused-appellant according to Islamic shariah law on 25.03.2011. During the wedlock with the accused-appellant, the complainant gave birth to a child. Thereafter, the marriage was dissolved through talaq. But, considering the future of the child, the complainant and the accused-appellant again got married on 07.02.2019. Some days after marriage for second time, the accused-appellant began to demand Tk. 5,00,000/= as dowry. On April of 2019, the complainant became bound to give Tk. 50,000/= to the accused-appellant, taking from her father. After some days of taking Tk. 50,000/=, the accused-appellant again began to demand Tk. 50,000/= as dowry for expansion of his business. The accused-appellant used to torture the complainant as she refused to give the dowry money. At last on 12.06.2019, the accused-appellant tortured the complainant brutally. At one stage of the torture, the witness no. 2 (father of the complainant) and witness no.3 (younger brother of the complainant) rescued the complainant with the help of the neighbors and took to Dhaka Medical College Hospital for treatment. On 13.06.19 the complainant went to Kamrangirchar Thana to file FIR but the duty officer refused to take the case and suggested her to file complaint in court.
4. That the learned Tribunal, considering the complaint, affidavit and examination of the complainant, ordered to record the complaint as Petition Case and sent the case to the Chief Metropolitan Magistrate for inquiry by Order No. 01, dated 19.06.19.
5. That on 05.08.19, the learned Tribunal, considering the inquiry report and statements of the Judicial Witnesses, took cognizance of an offence under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain and issued warrant of arrest against the accused-appellant vide Order No.3 dated 05.08.19.

6. That on 24.08.19, the accused was arrested and produced before the Court of Metropolitan Magistrate Md. Tofazzol Hossain. The Magistrate ordered to send the accused to jail *hajaj* vide Order dated 24.08.19.
7. That thereafter on 02.09.19, the accused-appellant filed an application praying for bail in the Nari O Shishu Nirajatan Daman Tribunal-04, Dhaka. Upon hearing both parties, the learned Tribunal rejected the bail application and fixed the next date, i.e. 17.10.19 for charge-hearing by Order No.8 dated 23.09.19. This same is the impugned order.
8. That it is humbly submitted that the facts of the alleged case is completely false, concocted and it is not maintainable under Section 11(Ga) of Nari O Shishu Nirjatan Ain, 2000. The learned Judge of the Tribunal has passed the impugned order without considering facts and circumstances of the case. Hence, the accused-appellant may kindly be granted bail.
9. That it is submitted that the accused-appellant pronounced *talaq* on 14.03.2019 and sent a divorce notice to the complainant by registered post. A copy of the notice was also sent to the Mayor, Dhaka South City Corporation and it was received on 18.03.19. Thereafter, the Arbitration Council of the Dhaka South City Corporation (Area-3) opened a *Salishi* Case being no. 46.207.004.23.01.725. (2016)/339 Date- 10/04/2019 (Area-3) and served notice upon the accused-appellant and complainant to appear before the Council for reconciliation. But none of them appeared before the Arbitration Council and as such the *talaq* became effective after lapse of 90 days from the date of sending *talaq* notice, as mentioned in the Council's Order No. 4 dated 09.07.2019. Upon getting the *talaq* notice, the complainant, without appearing before the Arbitration Council for reconciliation, filed the case only to harass and humiliate the accused-appellant on 19.06.19 when the procedure of reconciliation was pending in the office of Arbitration Council. But, the learned Tribunal failed to appreciate this material point of fact and thereby rejected the bail petition of the accused-appellant. Hence, the accused-appellant may kindly be granted bail.
10. That it is submitted that the judicial inquiry done in the present case has not been done properly. The Inquiry Officer did not apply his judicial mind in conducting the inquiry and submitting the report. So, the cognizance taken upon such an inquiry report is not acceptable in the eye of law. Hence, the accused-appellant may kindly be granted bail.
11. That it is submitted that the accused-appellant is a permanent citizen of Bangladesh. He will not misuse the privilege of bail in any manner and he shall abide by all terms and conditions of bail and he shall furnish adequate surety as per order of this Hon'ble Court. Hence, the impugned order is liable to be set aside.
12. That it is submitted that the accused-appellant was entangled with the instant case wrongly nothing but only to ruin his life. He will not flee away and misuse the privilege of bail if he is granted bail from this Hon'ble Court. The accused-appellant shall furnish adequate surety as per order of this Hon'ble Court and shall face trial duly. Hence, the impugned order may kindly be set aside.

13. That being aggrieved by and dissatisfied with the impugned Order No. 8 dated 23.09.2019 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka, in Nari-O-Shishu Tribunal Case No. 254 of 2019 arising out of Nari-O-Shishu Petition Case No. 146 of 2019, now pending before the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka, the accused-appellant begs to prefer this appeal on the following amongst other :—

G R O U N D S

- I. For that the fact of the alleged case is completely false, concocted and it is not maintainable under Section 11(Ga) of Nari-O-Shishu Nirjatan Ain 2000. The Nari-O-Shishu Nirjatan Daman Tribunal No.4, Dhaka has passed the impugned order without considering facts and circumstances of the case. Hence, the accused-appellant may kindly be granted bail.
- II. For that the accused-appellant pronounced talaq on 14.03.2019 and sent a divorce notice to the complainant by registered post. A copy of the notice was also sent to the Mayor, Dhaka South City Corporation and it was received on 18.03.19. Thereafter, the Arbitration Council of the Dhaka South City Corporation (Area-3) opened a Salishi Case being no. 46.207.004.23.01.725. (2016)/339 Date- 10/04/2019 (Area-3) and served notice upon the accused-appellant and complainant to appear before the Council for reconciliation. But none of them appeared before the Arbitration Council and as such the talaq became effective after lapse of 90 days from the date of sending talaq notice, as mentioned in the Council's Order No. 4 dated 09.07.2019. Upon getting the talaq notice, the complainant, not appearing before the Arbitration Council for reconciliation, filed the case only to harass and humiliate the accused-appellant on 19.06.19 when the procedure of reconciliation was pending in the office of Arbitration Council. But, the learned Tribunal failed to appreciate this material point of fact and thereby rejected the bail petition of the accused-appellant. Hence, the accused-appellant may kindly be granted bail.
- III. For that the judicial inquiry done in the present case has not been done properly. The Inquiry Officer did not apply his judicial mind in conducting the inquiry and submitting the report. So, the cognizance taken upon such an inquiry report is not acceptable in the eye of law. Hence, the accused-appellant may kindly be granted bail.
- IV. For that the accused-appellant is a permanent citizen of Bangladesh. He will not misuse the privilege of bail in any manner and he shall abide by all terms and conditions of bail and he shall furnish adequate surety as per order of this Hon'ble Court. Hence, the impugned order is liable to be set aside.
- V. For that the accused-appellant is a permanent citizen of Bangladesh. He was entangled with the instant case wrongly nothing but only to ruin his life. He will not flee away and misuse the privilege of bail if he is granted bail from this Hon'ble Court. The accused-appellant shall furnish adequate surety as per order of this Hon'ble Court and shall face trial duly. Hence, the impugned order may kindly be set aside.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to admit the appeal, call for the records, notify the respondents and after hearing the parties and perusing the record be pleased to set aside the impugned Order No. 8 dated 23.09.2019 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka, rejecting an application for bail of the accused-appellant in Nari-O-Shishu Tribunal Case No. 254 of 2019 arising out of Nari-O-Shishu Petition Case No. 146 of 2019 under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, now pending before the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka;

AND

Pending disposal of the appeal, the accused-appellant may kindly be enlarged on ad-interim bail.

And for this act of kindness, your accused-appellant as in duty bound shall ever pray.

Sample

DISTRICT : DHAKA

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)**

CRIMINAL APPEAL NO. _____ OF 2019

IN THE MATTER OF:

An application for bail.

AND

IN THE MATTER OF:

Md. Anis Bepari, Son of late Alam Bepari and Amena Khatun, of House No. 74, West Islambagh (Mona Hajir Bari) Level 5, Police Station- Chalkbazar, District- Dhaka.

----- **Accused-Appellant-Petitioner**
(In Jail Hajat)

VERSUS

1. The State
2. Most. Tania Akter, daughter of late Ali Akbar, wife of Md. Anis Bepari, of Village- West Islamnagar (Mojibar Ghat), House of Aziz Driver, Post Office- Ashrafabad, Police Station- Kamrangirchar, District- Dhaka. (Complainant)

..... **Respondents-Opposite Parties.**

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition of the accused-appellant-petitioner most respectfully—

SHEWETH:

1. That the accused-appellant-petitioner filed this bail application against Order No. 8 dated 23.09.2019 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka, rejecting an application for bail of the accused-appellant in Nari-O-Shishu Tribunal Case No. 254 of 2019 arising out of Nari-O-Shishu Petition Case No. 146 of 2019 under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, now pending before the Nari-O-Shishu Nirjatan Daman Tribunal, No.4, Dhaka.
2. That the accused-appellant-petitioner is law abiding and peace loving citizen of Bangladesh and he hails from a respectable Muslim family.
3. That the prosecution case in brief is that on 19.06.19, the Complainant-Respondent-Opposite Party filed a complaint petition along with an affidavit against the Accused-Appellant-Petitioner under section 11(Ga) of the Nari O Shishu Nirjatan Daman Ain, 2000 in Nari O Shishu Nirjatan Daman Tribunal 4, Dhaka claiming *inter alia* that the complainant got married with the accused-appellant according to Islamic shariah law on 25.03.2011. During the wedlock with the accused-appellant, the complainant gave birth to a child. Thereafter, the marriage was dissolved through talaq. But, considering the future of the child, the complainant and the accused-appellant again got married on 07.02.2019. Some days after marriage for second time, the accused-appellant-petitioner began to demand Tk. 5,00,000/= as dowry. On April of 2019, the complainant became bound to give Tk. 50,000/= to the accused-appellant, taking from her father. After some days of taking Tk. 50,000/=, the accused-appellant again began to demand Tk. 50,000/= as dowry for expansion of his business. The accused-appellant used to torture the complainant as she refused to give the dowry money. At last on 12.06.2019, the accused-appellant tortured the complainant brutally. At one stage of the torture, the witness no. 2 (father of the complainant) and witness no.3 (younger brother of the complainant) rescued the complainant with the help of the neighbors and took to Dhaka Medical College Hospital for treatment. On 13.06.19 the complainant went to Kamrangirchar Thana to file FIR but the duty officer refused to take the case and suggested her to file complaint in court. Certified copy of the complaint petition along with affidavit is annexed hereto and marked as **Annexure "A"**.

4. That the learned Tribunal, considering the complaint, affidavit and examination of the complainant, ordered to record the complaint as Petition Case and sent the case to the Chief Metropolitan Magistrate for inquiry by Order No. 01, dated 19.06.19.
5. That the complainant submitted an injury report with the complaint petition. Certified copy of the injury report is annexed hereto and marked as **Annexure- “B”**.
6. That on 05.08.19, the learned Tribunal, considering the inquiry report and statements of the Judicial Witnesses, took cognizance of an offence under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain and issued warrant of arrest against the accused-appellant vide Order No.3 dated 05.08.19. Certified copy of the inquiry report is annexed hereto and marked as **Annexure “C”**.
7. That on 24.08.19, the accused was arrested and produced before a Court of Metropolitan Magistrate. The Magistrate ordered to send the accused to jail hajat vide Order dated 24.08.19. Certified copy of the Order dated 24.08.19 is annexed hereto and marked as **Annexure “D”**.
8. That thereafter on 02.09.19, the accused-appellant filed an application praying for bail in the Nari O Shishu Nirajatan Daman Tribunal-04, Dhaka. Upon hearing both parties, the learned Tribunal rejected the bail application and fixed the next date, i.e. 17.10.19 for charge-hearing by Order No.8 dated 23.09.19. This same is the impugned order.
9. That it is stated that the accused-appellant-petitioner sent divorce notice on 18.03.2019 to the complainant and has already obtained divorce certificate from the Dhaka South City Corporation.
10. That it is humbly submitted that the facts of the alleged case is completely false, concocted and it is not maintainable under Section 11(Ga) of Nari O Shishu Nirjatan Ain, 2000. The learned Judge of the Tribunal has passed the impugned order without considering facts and circumstances of the case. Hence, the accused-appellant may kindly be enlarged on bail.
11. That it is submitted that the accused-appellant pronounced talaq on 14.03.2019 and sent a divorce notice to the complainant by registered post. A copy of the notice was also sent to the Mayor, Dhaka South City Corporation and it was received on 18.03.19. Thereafter, the Arbitration Council of the Dhaka South City Corporation (Area-3) opened a Salishi Case bearing no. 46.207.004.23.01.725. (2016)/339 Date- 10/04/2019 (Area-3) and served notice upon the accused-appellant and complainant to appear before the Council for reconciliation. But none of them appeared before the Arbitration Council and as such the talaq became effective after lapse of 90 days from the date of sending talaq notice, as mentioned in the Council’s Order No. 4 dated 09.07.2019. Upon getting the talaq notice, the complainant, without appearing before the Arbitration Council for reconciliation, filed the case only to harass and humiliate the accused-appellant on 19.06.19 when the procedure of reconciliation was pending in the office of Arbitration Council. But, the learned Tribunal failed to appreciate this material point of fact and thereby rejected the bail petition of the accused-appellant. Hence, the accused-appellant may kindly be enlarged on bail.
12. That it is submitted that the judicial inquiry done in the present case has not been done properly. The Inquiry Officer did not apply his judicial mind in conducting the inquiry and submitting the report. So, the cognizance taken upon such an inquiry report is not acceptable in the eye of law. Hence, the accused-appellant may kindly be enlarged on bail.
13. That it is submitted that the accused-appellant is a permanent citizen of Bangladesh. He will not misuse the privilege of bail in any manner and he shall abide by all terms and

conditions of bail and he shall furnish adequate surety as per order of this Hon'ble Court. Hence, the accused-appellant may kindly be enlarged on bail.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to enlarge the accused-appellant-petitioner on bail in Nari-O-Shishu Tribunal Case No. 254 of 2019 arising out of Nari-O-Shishu Petition Case No. 146 of 2019 under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, now pending before the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.4, Dhaka, for ends of justice, and/or pass such other or further order or orders as your lordships deem fit and proper.

And for this act of kindness, your accused-appellant as in duty bound shall ever pray.

AFFIDAVIT

I, Mohammad Tariqul Islam, son of Mohammad Tazul Islam and Shahanara Begum, House-Gazi Bari, Village Sengua, Post Office-Kachua-3633, Kachua, Palli, Chandpur, aged about- 28 years, date of birth: 20.10.1991, by faith Muslim, by profession- Service, by Nationality- Bangladeshi, National ID No. 19911315894000287 do hereby solemnly affirm and say as follows:

01. That I am the cousin brother of the accused-petitioner and *tadbirkar* of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Zarif Kabir)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Zarif Kabir)
Advocate
Membership # 6731
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample**DISTRICT- SHERPUR:**

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)**

CRIMINAL APPEAL NO. _____ OF 2019

IN THE MATTER OF:

A petition of appeal under section 408 of the Code of Criminal Procedure, 1898.

AND**IN THE MATTER OF:**

Md. Billal Hossain, son of Md. Jomshed Ali, of Village-Kalakanda, Upazila/Thana- Sribordi, District- Sherpur.

.... **Convict-Appellant.**

(In Jail)

VERSUS

The State

.....**Respondent.**

AND**IN THE MATTER OF:**

Judgment and Order dated 16.09.2018 passed by the Learned Joint Sessions Judge, 1st Court, Sherpur in Sessions Case No. 97 of 2017 corresponding to G. R. Case No. 525 of 2016 arising out of Sherpur Police Station Case No. 14 dated 5.10.2016 convicting the appellant under section 19(1) table 1(Ka) of the Madok Drabba Niyontron Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 7 (seven) years and to pay fine of Tk. 20,000/- (taka twenty two thousand) only, in default to suffer 6 (six) months simple imprisonment more.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the convict-appellant most respectfully—

S H E W E T H :

1. That the instant appellant-the convict filed this appeal challenging the judgment and Order dated 16.09.2018 passed by the Learned Joint Sessions Judge, 1st Court, Sherpur in Sessions Case No. 97 of 2017 corresponding to G. R. Case No. 525 of 2016 arising out of Sherpur Police Station Case No. 14 dated 5.10.2016 convicting the appellant under section 19(1) table 1(Ka) of the Madok Drabba Niyontron Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 7 (seven) years and to pay fine of Tk. 20,000/- (taka twenty two thousand) only, in default to suffer 6 (six) months simple imprisonment more.
2. That the convict- appellant is a law abiding citizen of the country. He comes from a respective Muslim family.
3. That the prosecution case in brief is that SI Md. Fazle Elahi, District Intelligence Branch, Sherpur while on a special operation at Sherpur Thana, received secret information that 2 (two) persons were carrying narcotic (heroin) and travelling from Bogra to Sherpur as passengers by Shimanto Bus containing registration no. - Dhaka Metro Ba-14-0702. Based on this information, on 05.10.2016 at 12:30 SI Fazle Elahi started to search vehicles at a check-post at the North of the Jamalpur-Sherpur Bridge, Sherpur. At 13:10 when the Shimanto Bus arrived at the check-post, the convicted Md. Billal Hossain and Md. Abdul Jobbar, who were sitting in A-1, A-2 in the bust, tried to escape and were subsequently caught. SI Fazle Elahi recovered 03 (three) bags heroin weighing 15 (fifteen) grams from the right side pocket of accused Md. Billal Hossain's full pants and 01 (one) bag heroin weighing 05 (five) grams from the right side pocket of the accused Md. Abdul Jobbar's full pants, totaling of 04 (four) bags heroin weighing 20 (twenty) grams. SI Fazle Elahi collected signatures of the present witnesses after producing the seizure list. Thereafter SI Fazle Elahi filed the case at the police station.
4. That in course of investigation, the investigation officer prepared a seizure list on 5.10.2016.
5. That after a perfunctory investigation, Police submitted charge sheet being No. 581 dated 18.12.2016 against the appellant under Section 19(1) Table 1(Ka) of the Madok Drabba Niyontron Ain, 1990.
6. That the case was transferred to the Leaned Joint Sessions Judge, 1st Court, Sherpur for holding trial. The learned Joint Sessions Judge was pleased to take cognizance of offence and framed charge against the convict-appellant under section 19(1) table 1(Ka) of the Madok Drabba Niyontron Ain, 1990.
7. That during trial the Learned Prosecutor examined only 4 (four) witnesses; out of which 3 (three) were police officers, and no other relevant eye witness from the place of occurrence was examined except 1 (one) witness.
8. That thereafter, the Learned Joint Sessions Judge, 1st Court, Sherpur pronounced the said impugned judgment and order convicting the appellant under section 19(1) table 1(Ka) of the Madok Drabba Niyontron Ain, 1990 in the manner as stated above.

9. That the convict-appellant was enlarged on ad-interim bail by the Honorable High Court Division vide order dated 15.12.2016 and the convict-appellant never misused the privilege of bail. Although on the date of pronouncement of the impugned judgment the convict-appellant was absent on lawyers advice who did not in fact inform the appellant about the date of pronouncement of judgment, he subsequently voluntarily surrendered on 23.07.2019 upon being notified about the impugned judgment.
10. That being aggrieved by and dissatisfied with the aforesaid Judgment and Order dated 16.09.2018, the appellant begs to file this appeal on the following grounds amongst others-

GROUND S

- I. For that the learned court below committed an error of law in passing the impugned judgment and order and thereby convicting the appellant with 7 (seven) years rigorous imprisonment, in default 6 (six) months more; as such, the same is liable to be set aside for ends of justice.
- II. For that the allegations brought against the appellant is false, fabricated and misconceived. As such, the impugned judgment and order of conviction is liable to be set aside for ends of justice.
- III. For that the learned court below committed an error of law in passing the impugned judgment and order and thereby convicting the appellant with 7 (seven) years rigorous imprisonment, in default 6 (six) months more merely on the basis of partisan witnesses who are the Police Officers in this case and also without examining the genuine involvement of the appellant with the seized item recovered in this case; as such, the same is liable to be set aside for ends of justice.
- IV. For that the learned court below failed to examine properly and neutrally that the appellant had no direct nexus with the alleged items recovered and the same was not properly measured by the examiner through chemical report; as such the impugned judgment and order of conviction is liable to be set aside for ends of justice.
- V. For that the trial court below vehemently failed to examine that the investigation officer SI Fazle Elahi did not search any other person(s) in the bus apart from the 2 (two) accused, this raises serious doubt against the prosecution, hence the impugned judgment and order is liable to be set aside.
- VI. For that the Trial Court disregarded the fact that the prosecution examined 3 (three) witnesses who are police officers out of the 4 (four) witnesses they have examined in total. It has left the case not proving beyond reasonable doubt.
- VII. For that the Trial Court did not consider the important fact that the prosecution examined only 1 (one) witness who is a civilian and that the prosecution failed to summon and examine the other civilian witnesses and prosecution did not explain the reasons behind non examination of the other vital witnesses.

- VIII. For that the only civilian witness PW-3 during cross-examination mentioned that the police searched all passengers which is inconsistent with all the other 3 (three) witnesses. In this situation, the presumption went in favour of the defence as per provisions of section 114(g) of the Evidence Act, 1872. Examining the PW-1,2,3 i.e. police officers is of no value in the eye of evidence law because the same not proved beyond reasonable doubt by corroborating and examining other witnesses. But the trial court below failed to appreciate these inconsistencies in the prosecution case and passed the impugned judgment and order of conviction which is liable to be set aside for ends of justice.
- IX. For that the learned trial court below did not consider the provision of section 366 and other relevant provisions of the Code of Criminal Procedure, and it passed the impugned judgment without applying any judicial mind; hence the impugned judgment and order is liable to be set aside.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to call for the records, admit the appeal by condoning delay, notify the respondent and after hearing the parties and perusing the record be pleased to allow the appeal by setting aside the impugned judgment and order dated 16.09.2018 passed by the Learned Joint Sessions Judge, 1st Court, Sherpur in Sessions Case No. 97 of 2017 corresponding to G. R. Case No. 525 of 2016 arising out of Sherpur Police Station Case No. 14 dated 5.10.2016 convicting the appellant under section 19(1) table 1(Ka) of the Madok Drabba Niyontron Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 7 (seven) years and to pay fine of Tk. 20,000/- (taka twenty two thousand) only, in default to suffer 6 (six) months simple imprisonment more.

AND

Pending disposal of the appeal, the convict-appellant may kindly be enlarged on ad-interim bail and realization of fine may kindly be stayed for ends of justice.

And for this act of kindness, your petitioner as in duty bound shall ever pray.

Sample**DISTRICT: SHERPUR**

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)**

CRIMINAL APPEAL NO. OF 2019

IN THE MATTER OF:

An application for bail.

AND**IN THE MATTER OF:**

Md. Billal Hossain, son of Md. Jomshed Ali, of Village-Kalakanda, Upazilla/Thana- Sribordi, District- Sherpur.

..... Accused-Appellant-Petitioner.

(In jail)

-VERSUS-

The State, represented by the Deputy Commissioner, Sherpur.

..... Respondent.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble Petition of the appellant-petitioner most respectfully—

S H E W E T H :

1. That the appellant-petitioner has moved this application for bail in this Criminal Appeal judgment and Order dated 16.09.2018 passed by the Learned Joint Sessions Judge, 1st Court, Sherpur in Sessions Case No. 97 of 2017 corresponding to G. R. Case No. 525 of 2016 arising out of Sherpur Police Station Case No. 14 dated 5.10.2016.
2. That one SI Md. Fazle Elahi, District Intelligence Branch, Sherpur along with other forces based on secret information received, put a check-post at the North of the Jamalpur-Sherpur

Bridge, Sherpur. The prosecution case inter-alia was that on 05.10.2016 at 13.10 hours two passengers of Shimanto bus being registry No. Dhaka Metro Ba-14-0702 was arrested by the police. The police searched the body of the two accused and found 03 (three) bags heroin weighing 15 (fifteen) grams from the accused Md. Billal Hossain. The police seized those items from the right side pocket of accused Md. Billal Hossain's full pants in present of the witnesses. Hence this case was filed to the Sherpur Police Station under Section 19(1) Table 1(Ka) of the Madok Drabba Niyontron Ain, 1990. Certified copy of the said FIR is annexed hereto and marked as **Annexure – "A"**.

3. That the police on 05.10.2016 seized all items and prepared the seizure list in front of the witnesses. Certified copy of the said seizure list is annexed hereto and marked as **Annexure- "B"**.
4. That after a perfunctory investigation, Police submitted charge sheet being No. 581 dated 18.12.2016 against the appellant under Section 19(1) Table 1(Ka) of the Madok Drabba Niyontron Ain, 1990. Certified copy of the said charge sheet is annexed hereto and marked as **Annexure- "C"**.
5. That the statements of the 4 (four) prosecution witnesses were recorded on 08.11.2017; 11.03.2018 and 09.04.2018. Certified copy of the witness statements are annexed and marked as **Annexure- "D", "D-1", "D-2" And "D-3"** respectively.
6. That the convict-appellant was enlarged on ad-interim bail by the Honorable High Court Division vide order dated 15.12.2016 and the convict-appellant never misused the privilege of bail. The Learned Chief Judicial Magistrate, Sherpur subsequently received the said order. Certified copy of the said receipt is annexed hereto and marked as **Annexure- "E"**.
7. That on 23.07.2019 the appellant-petitioner voluntarily surrendered and filed an application for bail before the Learned Joint District and Sessions Judge, 1st Court, Sherpur which was rejected. Certified copy of order dated 23.07.2019 is annexed hereto and marked as **Annexure – "F"**.
8. That it is submitted that although on the date of pronouncement of the impugned judgment the appellant-petitioner was absent on lawyers advice who did not in fact inform the appellant-petitioner about the date of pronouncement of judgment, he subsequently voluntarily surrendered on 23.07.2019 upon being notified about the impugned judgment.
9. That it is submitted that the appellant-petitioner is innocent. He is no way connected with the allegations as brought against him in the First Information Report as well as in the Charge Sheet. He was implicated in this case falsely and in pursuance of vested quarter. Hence, the appellant may kindly be enlarged on bail.
10. That it is submitted that the appellant-petitioner is now more than 47 years of age and he surrendered on 23.07.2019; since then he is in jail. The appellant-petitioner is a permanent, innocent and peace loving citizen of Bangladesh. He is a patient of heart disease. Therefore, the petitioner is suffering acute health problem in jail; hence the appellant-petitioner may kindly be enlarged on bail.

11. That it is submitted that the appellant-petitioner's wife had a heart attack recently and the appellant-petitioner needs to be with his wife at this crucial time of her serious health condition; hence the appellant-petitioner may kindly be enlarged on bail.
12. That it is submitted that it is alleged in the said FIR and Charge Sheet that a total of 15 grams heroin was recovered from the body or possession of the accused-appellant and that he was carrying the said heroin from Bogra to Sherpur for the purpose of selling it; but during investigation no connection/nexus of him with trading or business of narcotics was discovered and found by the Police. Hence, the impugned order is liable to be set aside.
13. That it is submitted that the appellant-petitioner was arrested on 23.07.2019 and since then he has been languishing in the jail custody and he was interrogated in remand for 2 (two) days in connection with the alleged occurrence, but nothing could be extracted from him and no confessional statement was given by the appellant-petitioner. So, it is clear that the appellant-petitioner was no manner of connection with the alleged occurrence. However, the trial court below did not consider that aspect and rejected the application for bail of the appellant-petitioner. Hence, the impugned order is liable to be set aside and the petitioner may kindly be enlarged on bail.
14. That it is submitted that the appellant-petitioner is a permanent citizen of Bangladesh. He was entangled with the alleged occurrence wrongly nothing but only to ruin his life. He will not flee away and misuse the privilege of bail if he is granted bail from this Hon'ble Court. The appellant-petitioner shall furnish adequate surety as per order of this Hon'ble Court and he shall face trial duly. Hence, the impugned order is liable to be set aside.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to enlarge the accused-appellant-petitioner on bail in Sessions Case No. 97 of 2017 corresponding to G. R. Case No. 525 of 2016 arising out of Sherpur Police Station Case No. 14 dated 5.10.2016 convicting the appellant under section 19(1) table 1(Ka) of the Madok Drabba Niyontron Ain, 1990 and/or pass such other or further order or orders as your Lordships deem fit and proper.

And for this act of kindness, the accused-appellant-petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Mst. Mrium Bagum, wife of Md. Billal Hossain and mother's name MST Rahima Begum, of Village- Kalakanda, Upazilla/Thana- Sribordi, District- Sherpur, aged about 41, by faith Muslim, by profession- Housewife, by Nationality- Bangladeshi, National ID No. 8929008073063 do hereby solemnly affirm and say as follows:

01. That I am the *tadbirkar* of this case being the wife of accused-appellant-petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate

Membership #

Hall Room No.2, Supreme
Court Bar Association Building
Mobile :

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT: CHATTOGRAM.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)**

CRIMINAL REVISION NO. _____ OF 2018.

IN THE MATTER OF :

An application under Section 439 read with 435 of the
Code of Criminal Procedure, 1898.

AND**IN THE MATTER OF :**

Md. Aman Ullah, son of late Nur Ahmmad, Proprietor Dillys Traders, Permanent Address: 60 Dewan Bazar, Mobarak Manjil, Post- Andarkilla, Police Station-Kotwali, District- Chattogram, present address: 154/A, Manipur Para, Sheltec Manihar, Flat 1/F, Police Station-Tejgaon, District- Dhaka

--- **Accused-Petitioner.**
(On bail)

-VERSUS-

1. The State
2. Mohammad Saifur Rahman, son of late Syedur Rahman, Proprietor Messers Trade and Service International, of 102, Pachlish R/A, Police Station-Pachlish, District- Chattogram, represented by his Attorney Bishawjit Chowdhury, son of Ananda Chowdhury, of Post Office- Shakpura-4367, Police Station- Bowalkhali, District- Chattogram.

--- **Opposite Parties.**

AND**IN THE MATTER OF:**

Order No. 9 dated 15.10.2018 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No. 3168 of 2018 arising out of C.R. Case No. 752 of 2016 (Pachlish Thana) under section 138 read with section 140 of the Negotiable Instruments Act, 1881 rejecting the application filed by the accused-petitioner under section 344 of the Code of Criminal Procedure, 1898.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble Petition of the accused-petitioner most respectfully—

S H E W E T H :

1. That this Criminal Revision has filed under section 439 read with 435 of the Code of Criminal Procedure, 1898 against the impugned order No. 9 dated 15.10.2018 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No.

3168 of 2018 arising out of C.R. Case No. 752 of 2016 (Pachlish Thana) under section 138 read with section 140 of the Negotiable Instruments Act, 1881 rejecting the application filed by the accused-petitioner under section 344 of the Code of Criminal Procedure, 1898.

2. That the accused-petitioner is a law abiding, peaceful loving a permanent citizen of the Bangladesh. He hails from a respectable Muslim family.
3. That the complainant filed the instant case under sections 138 and 140 of Negotiable Instruments Act, 1881 alleging several false allegations against the accused persons stating inter alia that the accused persons lent money from the complainant and subsequently to repay the said lent money the accused persons issued a cheque being no. 0952101000009375 dated 17.07.2016 of United Commercial Bank Limited. of Tk.75,00,000/-(Tk. Seventy Five Lac) only from Dilly Traders account. Thereafter, the complainant presented the said cheque in AB Bank Limited, Pachlaish Branch on 21.09.2016 for encashment but the same was dishonoured on insufficient ground on same date. Thereafter, the Complainant requested the accused persons to repay the dishonoured amount but they did not pay. Subsequently, the Complainant served legal notice to them dated 18.10.2016 and thereafter, filed this case on 15.12.2016. Certified copy of the said petition of complaint is annexed hereto and marked as **ANNEXURE- "A"**.
4. That the learned Metropolitan Magistrate, Chittagong examined the complainant-opposite party No. 2 under section 200 of the Code of Criminal Procedure, 1898 and took cognizance of offence against the accused-petitioner under section 138 of the Negotiable Instruments Act, 1881 and issued summons against him.
5. That subsequently the accused-petitioner voluntarily surrendered before the learned Metropolitan Magistrate, Chittagong and obtained bail.
6. That accordingly, the case record was transmitted to the Court of learned Metropolitan Joint Sessions Judge, Court No. 4, Chittagong for holding trial as the same was ready for trial, wherein the case was renumbered as Sessions Case No. 3168 of 2018. Subsequently, the accused-petitioner surrendered further voluntarily and obtained bail in connection with the aforesaid case.
7. That charge has already been framed by the trial court against the accused-petitioner along with other accused. However, on 15.10.2018 the petitioner filed an application under section 344 of the Code of Criminal Procedure, 1898. Certified copy of the application is annexed hereto and marked as **Annexure- "B"**.
8. That after hearing the said application the learned trial court was pleased to reject the same vide order No. 9 dated 15.10.2018; against which the petitioner is moving this application before this Hon'ble Court.
9. That it is stated that all these claims of the Complainant are false, fabricated and misguiding. The Complainant has misguided this Court of law and justice to harass the accused persons. The statements of the complainant are also absolutely false, baseless, misconceived, malafide and arbitrary. The real facts are very shocking and alarming to the society where the petitioner and other accused are ill-fated victims of some local syndicates of Chittagong. The real facts are as follows—

- (A) The petitioner no.3 aged-65 years is a retired Chief Engineer of Bangladesh Water Development Board as well as Freedom Fighter of our liberation war being Certificate no.169009. That the petitioner no.3 is wife of petitioner no.2 who is a retired school Teacher who have no connection with the cheque in question. The complainant inserted her name in this case only to increase the harassment of the petitioner no.1.
- (B) That the petitioner after retirement started a business with his pension fund namely “Dilly Traders” but unfortunately he suffered huge loss in business. Thereafter, the complainant offered him to lend the money and as accordingly, the petitioner agreed to borrow from the Complainant. Thereafter, the petitioner took loan of Tk.1,50,00,000/-(Tk. One crore and fifty lac) only from the Complainant by executing an agreement dated 12.06.2016. The said agreement inter alia states as follows—

“এমতাবস্থায় ১ম পক্ষ তার নিজ ব্যবসা প্রতিষ্ঠান Dillys Traders এর প্রয়োজনে ২য় পক্ষের নিকট ১,৫০,০০,০০০ (এক কোটি পঞ্চাশ লক্ষ) টাকা সাময়িক ঋণ চাইলে পক্ষদ্বয় নিম্নলিখিত শর্তসাপেক্ষে উক্ত অর্থ আদান প্রদান করিতে সম্মত হন।

শর্তবলী

- ১। ২য় পক্ষ অদ্য রবিবার ১২/০৬/২০১৬ইং তারিখে ১ম পক্ষকে ইহার অংশীদারী প্রতিষ্ঠান Dillys Traders এর বরাবরে চেক নং ৩২৭৭৩০২ (ওয়ান ব্যাংক লিঃ), ২৫৩১৬২২ (মিউচুয়াল ট্রাস্ট ব্যাংক লিঃ), ২৩৪০৪৩৫ (ব্যাংক এশিয়া লিঃ), ০০৮৩৩৫২ (স্ট্যান্ডার্ড চার্টার্ড ব্যাংক), ৫৮৭৫৪১০ (এবি ব্যাংক লিঃ) তাং ১২/০৬/২০১৬ ইং ইত্যাদি চেক মূলে সর্বমোট ১,৫০,০০,০০০/- টাকা প্রদান করিলেন।
- ২। এই চুক্তি পত্র স্বাক্ষরের মাধ্যমে এবং উক্ত ১নং শর্তে উল্লেখিত চেকসমূহ নগদায়নের সাপেক্ষে ১ম পক্ষ মোট ১,৫০,০০,০০০/- (এক কোটি পঞ্চাশ লক্ষ) টাকা ২য় পক্ষ হইতে প্রাপ্তি স্বীকার করিলেন।
- ৩। ১ম পক্ষ অদ্য রবিবার ১২/০৬/২০১৬ ইং তারিখে ২য় পক্ষ বরাবরে/২য় পক্ষের প্রস্তাবিত ব্যক্তি প্রতিষ্ঠানের বরাবরে উহার অংশীদারী প্রতিষ্ঠানের ব্যাংক একাউন্ট হইতে গৃহীত ঋণের বিপরীতে মূল অর্থ ও লভ্যাংশ সহ সর্বমোট ৩,০০,০০,০০০/- (তিন কোটি) টাকার চেক প্রদান করিলেন যাহার চেক নং ১১৩৮২৫৬, ১১৩৮২৫৫, ১১৩৮২৫৮, ১১৩৮২৫৭ তাং ১৭/০৭/২০১৬ (ইউনাইটেড কমার্শিয়াল ব্যাংক লিঃ)
- ৪। ১ম পক্ষ ৩নং শর্তে উল্লেখিত চেক সমূহ অবশ্যই আগামী সর্বোচ্চ তিন মাসের মধ্যে নগদায়নের ব্যবস্থা করিবেন।
- ৫। ১ম পক্ষ অদ্য রবিবার ১২/০৬/২০১৬ইং তারিখে ২য় পক্ষের বরাবরে উহার নিজ মালিকানাধীন নিম্ন লিখিত ১নং তপশীলের ফ্ল্যাটটি একটি রেজিস্ট্রি বায়না সম্পাদন করিয়া দিবেন এবং ২নং তপশীলে উল্লেখিত ফ্ল্যাটটির একটি দ্বিপক্ষীয় বিক্রয় চুক্তি সম্পাদন করিয়া দিবেন যাহাতে ফ্ল্যাটটির নির্মাতা প্রতিষ্ঠান স্যানমারের স্বাক্ষর/সম্মতি উল্লেখ থাকিবে।
- ৬। এইখানে উল্লেখ্য যে, যদি ১ম পক্ষ ৩নং শর্তে উল্লেখিত মূল ঋণ ও লভ্যাংশ সহ মোট ৩,০০,০০,০০০/- টাকা ২য় পক্ষকে আগামী তিন মাসের মধ্যে তাহার দেয় চেকের মাধ্যমে পরিশোধ করিয়া দেন তাহা হইলে ৪নং শর্তে উল্লেখিত তাহার সম্পাদিত সকল রেজিস্ট্রার্ড বায়না চুক্তি ও দ্বিপক্ষীয় বিক্রয় চুক্তি সম্পাদন করিতে পারিবেন না। যদি কও বা করায় তাহা বে-আইনী বলিয়া গণ্য হইবে এবং সর্বআদালতে বে-আইনী বলিয়া প্রতিয়মান হইবে এবং আইনত দণ্ডনীয়।

- ৭। ১ম পক্ষ ২য় পক্ষকে তার প্রাপ্য ৩,০০,০০,০০০/- টাকা বুঝিয়া দেয়ার পর (অর্থাৎ ৩নং শর্তে উল্লেখিত চেক সমূহ নগদায়নের পর) ১ম পক্ষের সম্পাদিত সকল চুক্তির মূল কপি ১ম পক্ষকে ফেরত দিতে হইবে প্রয়োজনে রেজিস্ট্রি চুক্তিটি পুনঃ বাতিলের প্রয়োজনে ১ম পক্ষের নির্দেশ মোতাবেক সাব-রেজিস্ট্রি অফিসে উপস্থিত থেকে পুনঃ বাতিল করিতে হইবে।
- ৮। ২য় পক্ষ কোন অবস্থাতেই ১ম পক্ষ হইতে ৩নং শর্তে উল্লেখিত অর্থের অধিক অন্য কিছু প্রদত্ত ঋণের বিপরীতে দাবি করিতে পারিবে না।
- ৯। যদি ১ম পক্ষ ৩নং শর্তে উল্লেখিত অর্থ ২য় পক্ষকে ফেরত দিতে ব্যর্থ হয় তবে ২য় পক্ষ ৪ নং শর্তে উল্লেখিত ১ম পক্ষের মালিকানাধীন ও ১ম পক্ষের দ্বারা সম্পাদিত রেজিস্ট্রিকৃত বায়না নামা ও বিক্রয় চুক্তি মোতাবেক ১ ও ২নং তফশীলের উল্লেখিত ফ্ল্যাট সমূহ নিজ নাম/উনার কোন প্রতিনিধি বা প্রতিষ্ঠানের নামে চূড়ান্ত দলিল করিয়া নিতে পারিবেন। এই ক্ষেত্রে ১ম পক্ষের কোন ওজর আপত্তি সর্বআদালতে অগ্রাহ্য অযোগ্য ও বে-আইনী বলিয়া গণ্য হইবে এবং এই ক্ষেত্রে ১ম পক্ষ ২য় পক্ষকে সার্বিক সহযোগিতা করিতে বাধ্য রহিলেন অন্যথায় ২য় পক্ষ আদালতের মাধ্যমে বায়না দলিলে অবশিষ্ট টাকা সংশ্লিষ্ট বিজ্ঞ আদালতে জমা করিয়া উক্ত ফ্ল্যাট সমূহ রেজিস্ট্রি করিয়া লইতে পারিবেন। এই রূপে উভয় পক্ষ সজ্ঞানে, নিজ বুদ্ধিতে, বিনা প্ররোচনায় নিম্ন লিখিত স্বাক্ষর গণের উপস্থিতিতে এই চুক্তি সম্পাদন করিলেন।”

Photocopy of the contract is annexed hereto and marked as Annexure- “C”.

10. That it is very clear that, the terms and conditions of the said agreement are absolutely illegal, malafide, arbitrary and barred by law, because it imposed unjustified and unfair obligation upon the petitioner for paying double of loan amount only for 3 (three) months, which is not sustainable in the eye of law. Claiming interest equivalent to the principal amount for such a short period of loan is prohibited under the laws of Bangladesh. This rate is excessive and this sort of usurious loan is not tenable in law.
11. That at that time the petitioner was in serious financial crisis and mentally disturbed due to his huge business loss. The Complainant took full opportunity of the adverse situation of the petitioner and made him bound to execute the said unlawful agreement. That the Complainant have not only demanded excessive interest on the said loan amount but also took unfair and illegal advantage by abusing the petitioner's vulnerability at the time of taking loan. The Complainant also compelled the petitioner to sign 4 (four) undated cheques being Nos. 1138256, 1138255, 1138258, 1138257 dated 17.07.2016 of United Commercial Bank Limited, each amounting Tk. 75,00,00,000/- (taka seventy five lac) only amounting Tk. 3,00,00,000/- (taka three crore) only. In addition to, the Complainant also compelled the petitioner to sign one unregistered Deed of Agreement for allotment of apartment situated at C-11 of Sanmar Sardinia at Forest Research Institute Road, Durican Hill, Muradpur, Chittagong and one Registered Bainanama being no.8905 dated 21.06.2016 with Sadar Sub-registry office, Chittagong for the apartment situated at B-6, Level-7, Mouza- Khulshi, Thana- Khulshi, District- Chittagong; owned by the petitioner, value of those properties are more than the loan amount.
12. That the petitioner has all good intentions to repay the aforesaid loan at reasonable interest in accordance with law. The petitioner is under acute crisis as he suffered huge loss in business. Stating all these facts into details, the petitioner sent a legal notice on 30.10.2016 requesting the Complainant to reduce the rate of interest and allow him 6 (six) months more

to repay the aforesaid amount, and meanwhile the complainant was also requested for not to misuse the aforesaid cheques and deeds relating to land against the petitioner in order to accelerating the repayment of aforesaid Tk. 1,50,00,000/- (taka one crore & fifty lac) only at the FDR rate interest per months by next 6 (six) months of the notice. But the notice met with no response from the Complainant. In the meantime, the complainant fabricated the said cheques and misusing the same filed 4(four) cases being nos. Session Case No.3168/18(arising C.R. Case No.752/16), Session Case No.3167/18(arising C.R. Case No.753/16), Session Case No.1328/18 (arising C.R. Case No.409/16), C.R. Case No.440/16) claiming Tk. 3,00,00,000/- (taka three crore) only against actual Tk. 1,50,00,000/- (taka one crore & fifty lac) only. Thereafter, the petitioners have obtained bail from the learned court and the said cases are in trial now. Copies of legal notices are annexed hereto and marked as **Annexure- “D and D-1”**.

13. That in addition, against said forced Bainanama the complainant has filed a Civil suit being No. 677/2016 in 3rd Joint District Judge, Chittagong for Specific Performance of Contract praying—

অতএব, বাদীগণ সবিনয় প্রার্থনা করেন যে,

- (ক) ১ নং মূল বিবাদী কর্তৃক ১২/০৬/২০১৬ ইং তারিখে তপশীলোক্ত সম্পত্তির উপর নির্মিতব্য ভবনের ফ্ল্যাট সংক্রান্তে বাদীগণের বরাবরে রেজিস্ট্রিকৃত ৮৯০৫ নং বায়নানামার অনুবলে তপশীলোক্ত সম্পত্তির উপর নির্মিতব্য ভবনের ফ্ল্যাট সংক্রান্তে বাদীগণের বরাবরে ছাফ কবলা দলিল সম্পাদনে রেজিস্ট্রি করিয়া দিতে ডিক্রী প্রদানের মর্জি হয়;
- (খ) বিজ্ঞ আদালতের নির্ধারিত সময় সীমার মধ্যে ১ নং মূল বিবাদী বাদীগণের বরাবরে ফ্ল্যাট রেজিস্ট্রি করিয়া দিতে ব্যর্থ হইলে বাদীগণ আদালতের মাধ্যমে জারী পরিচালনায় ফ্ল্যাটের রেজিস্ট্রি পাইতে অধিকারী মর্মে ডিক্রী প্রদানে মর্জি হয়;
- (গ) মোকদ্দমার যাবতীয় ব্যয় ১নং মূল বিবাদীর বিরুদ্ধে ডিক্রী প্রদানে মর্জি হয়;
- (ঘ) অবস্থার প্রেক্ষিতে ও বিজ্ঞ আদালতের ন্যায় বিচারে বাদীগণ অন্যান্য যে যে প্রতিকার সমূহ পাইতে পারেন বলিয়া সাব্যস্ত হয়, তাহাও ডিক্রী প্রদানে মর্জি হয়।

Photocopy of the plaint of Title Suit No. 677 of 2016 is annexed hereto and marked as **Annexure- “E”**.

14. That the petitioner made several requests to the Complainant not to harass them and accept the actual money. But very regretfully, the Complainant did not pay any heed to the petitioner requests. Rather the Complainant threatened to kill him along with all family members in case of default to repay whole Tk. 3,00,00,000/- (taka three crore) only as claimed by them arbitrarily. Thereafter, finding no other alternative way, the petitioner filed a Declaration Suit being no.624/2016 in 4th Joint District Judge, Dhaka praying to—

- (a) pass a decree declaring that the provisions of clause 3 of the said Agreement dated 17.07.2016 so far as it relates to imposition of interest of Tk. 1,50,00,000/- on the principal amount Tk. 1,50,00,000/- for a period of 3 (three) months only by the defendants upon the plaintiff in the tune of “১ম পক্ষ অদ্য রবিবার ১২/০৬/২০১৬ ইং তারিখে ২য় পক্ষ বরাবরে/২য় পক্ষের প্রস্তাবিত ব্যক্তি বা প্রতিষ্ঠানের বরাবরে উহার অংশীদারী প্রতিষ্ঠানের ব্যাংক একাউন্ট হইতে গৃহীত ঋণের বিপরীতে মূল অর্থ ও লভ্যাংশ সহ সর্বমোট ৩,০০,০০,০০০ (তিন কোটি) টাকার চেক প্রদান করিলেন যাহার চেক নং ১১৩৮২৫৬, ১১৩৮২৫৫, ১১৩৮২৫৮, ১১৩৮২৫৭ তাং

১৭/০৭/২০১৬ (ইউনাইটেড কমার্শিয়াল ব্যাংক লিঃ)” are illegal, malafide, void, not binding upon the plaintiff and not tenable in the eye of law;

- (b) declaring that the plaintiff to be allowed to repay the aforesaid loan amount Tk. 1,50,00,000/- (taka one crore fifty lac) only to the defendants at the current FDR interest rate or any rate within such period as the Learned Court may deem fit and proper;
- (c) award costs of the suit in favour of the plaintiff;
- (d) grant such other or further relief or reliefs which as to your honour may seem fit and proper under law and equity.

Certified copy of the plaint of Title Suit No. 624 of 2016 is annexed hereto and marked as **Annexure- “F”**.

15. That thereafter, the instant Complainant became very ferocious knowing about the said Suit filed by the instant petitioner and continuously threatened them to kill in case of default to repay Tk. 3,00,00,000/- (taka three crore) only. The instant Complainant also created huge pressure upon the petitioner to execute registered sale Deed against the said forced Bainanama being no.8905 dated 21.06.2016. In these set of circumstances, the petitioner filed a G.D. being no.23 dated 01.05.2018 in Tejgaon Police Station, Dhaka Metropolitan, Dhaka stating that—

বরাবর,
অফিসার ইনচার্জ
তেজগাঁও থানা
ঢাকা মেট্রোপলিটন পুলিশ, ঢাকা

বিষয় : সাধারণ ডায়েরী করার আবেদন।

জনাব,

আমি নিম্নস্বাক্ষরকারী মোঃ আমান উল্লাহ, বয়স-৬৫, জাতীয় পরিচয় পত্র নং ১৯২৬৭১০০৭১৩৬৮ পিতা- মৃত নূর আহমেদ, মাতা- মৃত তায়েবা বেগম, বর্তমান ঠিকানা- শেলটেক মনিহার, ফ্ল্যাট নং- ১/এফ, ১৫৪/১, মনিপুর পাড়া, তেজগাঁও, ঢাকা-১২১৫। স্থায়ী ঠিকানা- মোবারক মঞ্জিল, ৬০, দেওয়ান বাজার, আন্দরকিল্লা, কোতয়ালী, চট্টগ্রাম। আমি একজন মুক্তিযোদ্ধা, আমার সনদ নম্বর- ১৬৯০০৯। আমি পানি উন্নয়ন বোর্ডের প্রধান প্রকৌশলী পদে থেকে অবসর গ্রহণ করে ডিলিস ট্রেডার্স নামক ব্যবসা প্রতিষ্ঠান চালু করি। কিন্তু উক্ত প্রতিষ্ঠানে আর্থিকভাবে ব্যবসায় ক্ষতিগ্রস্ত হই। অতপর (১) মোঃ আনোয়ার হোসেন চৌধুরী, পিতা- মরহুম আবদুল ওয়াদুদ চৌধুরী, বর্তমান ঠিকানা- বাড়ী নং-এক্স-১১, রোড নং-০১, ব্লক-এ, চাঁনগাঁও আবাসিক এলাকা, চাঁনগাঁও, চট্টগ্রাম, (২) মোহাম্মদ সাইফুর রহমান, পিতা- ছৈয়দুর রহমান, মাতা- আকতার বানু, মোবাইল ০১৮১৯৩১৫৬৯০ বর্তমান ঠিকানাঃ লেনভিন ট্রিজান, ফ্ল্যাট নং- ৯এ, বাড়ী নং-৬৮, রোড নং-০৬, ও. আর. নিজাম রোড, আবাসিক এলাকা, চট্টগ্রামদ্বয়ের নিকট ১,৫০,০০,০০০/- (এক কোটি পঞ্চাশ লক্ষ) টাকা ঋণ নেই। যাহা ৫টি চেকের মাধ্যমে নগদায়ন হয়। অতপর ঋণের টাকা দিতে ব্যর্থ হওয়ার কারণে তাহারা আমার কাছ থেকে জোরপূর্বক ৪ টি খালি চেক স্বাক্ষর করিয়ে নেয়। যাহার নম্বর ১১৩৮২৫৬, ১১৩৮২৫৫, ১১৩৮২৫৮ ও ১১৩৮২৫৭, ইউনাইটেড কমার্শিয়াল ব্যাংক লিঃ। অতপর তাহারা বর্ণিত চেকে তিন কোটি টাকা বসিয়ে ব্যাংক থেকে ডিজঅনার করে আমার ও আমার স্ত্রীর বিরুদ্ধে চেকের মামলা দায়ের করে। কিন্তু আমার স্ত্রী উক্ত চেক এ স্বাক্ষর করে নাই।

উল্লেখ্য যে আমরা বর্তমানে উক্ত মামলায় জামিনে রয়েছি। এছাড়াও মানিকাবীন দুটি মূল্যবান ফ্ল্যাটের রেজিস্ট্রি বায়না ও বিক্রয় চুক্তিপত্র জোর করে স্বাক্ষর করে নেয়। পরবর্তীতে আমার নিয়োজিত আইনজীবী লিগ্যাল নোটিশ এর মাধ্যমে ১.৫ কোটি টাকার পরিবর্তে এফ.ডি. হারে সুদের পরিমাণ নির্ধারণ করে ৬ মাসের সময় চেয়ে বিগত ৩০.১০.২০১৬ ইং তারিখে প্রস্তাব করলে তারা কোন উত্তর দেয়নি। পরবর্তীতে উক্ত অযৌক্তিক, বেআইনী চুক্তির শর্ত বাতিল চেয়ে আমি ৪র্থ যুগ্ম জেলা জজ আদালতে একটি ঘোষণামূলক দেওয়ানী মামলা করি। বিজ্ঞ আদালত উক্ত মামলা গ্রহন করে উক্ত ব্যক্তিদেরকে সমন প্রদান করেন। আমি খবর নিয়ে জানতে পারি তারা বেআইনী সুদের ব্যবসায় লিপ্ত। আমি উক্ত মামলার কারণে বিগত ০১/০৪/২০১৮ ইং তারিখে উক্ত বিষয়ে আলাপকালে আমার বাসায় অবস্থানকালীন সময় বিকাল আনুমানিক ৫ ঘটিকায় জনাব মোহাম্মদ সাইফুর রহমান, মোবাইল ০১৮১৯৩১৫৬৯০ হতে আমার মোবাইল নং ০১৭১১৮৬১৫৭৩ নাম্বারে আমাকে হত্যার হুমকি দেয় এবং ২৯/০৪/২০১৮ ইং তারিখে মোবাইল নং ০১৮১৯৪৪০০০ হতে আমার স্ত্রীর মোবাইল নং ০১৭১৩০৩৬০০১ এ ফোন দিয়ে আনুমানিক সকাল ৭ টার সময় আমার স্ত্রীকে হত্যার হুমকী দেয়, পণ্ডে আমার সাথে কথা বলতে চায় আমি ফোনে কথা বললে আমাকে জানায় যে আমি মামলা তুলে না নিলে আমাকে ও আমার পরিবারের সদস্যদেরকে তুলে নিয়ে হত্যা করবে।

অতএব, মহোদয় বিষয়টি আপনার থানায় সাধারণ ডায়েরিভুক্ত করতে মর্জি হয়।

তেজগাও থানার সাধারণ ডায়েরী নং ২৩

তারিখঃ ০১/০৫/২০১৮ ইং

বিনীত নিবেদক,
(মোঃ আমান উল্লাহ)
মোবাইল নং- ০১৭১১-৮৬১৫৭৩

Photocopy of the GD is annexed hereto and marked as **Annexure- “G”**.

16. That the Complainant didn't stop here. In addition, the Complainant has created huge pressure from different influential sources and made the instant petitioner bound to execute sale of 5(five) flats along with proportionate land of Plot no.11/A, Block-C out of total 5 Katha land in the name of some disguised persons fixed by the instant Complainant without any sale price at all. The petitioner finding no alternative made application to the Ministry of Housing and Public Works vide letter dated 03.04.2018 for sale of the said flats as per wish of the instant Complainant.
17. That the Complaint is a dishonest litigant having strong syndicate in Chittagong area in lending in such unlawful way and grab the properties of the helpless people. The petitioner is very helpless and passing every day in tremendous fear. The petitioner can't move easily due to fear of the Complainant and as accordingly, he is confined to his house only which is not tenable in any consideration.
18. That it appears from the aforesaid facts and circumstances, that the allegations of the complainant are absolutely false, *malafide*, ill-motivated, fake and fabricated. Moreover, he didn't mention how he paid the money to the petitioner. The petitioner is a victim of greed of the Complainant who with *malafide* intention intends to grab more money and property from the petitioner and to harass them.

19. That as the petitioner took resort of court of justice and law filing said Civil Suit being no.624/20116 in 4th Joint District Judge, Dhaka (Mohammad Amanullah vs Saifur Rahman) regarding the said disputed cheques which is now pending between the same parties.
20. That moreso, in the said Civil Suit being no. 677/2016 (Saifur Rahman vs. Mohammad Amanullah), the instant petitioner appeared and he is contesting the suit.
21. That it is submitted that under the circumstances, further continuation of this case may kindly be adjourned/stayed till disposal of the Declaration Suit No. 624 of 2016, pending before the learned 4th Joint District Judge, Dhaka and Other Suit No.677 of 2016, pending before 3rd Joint District Judge, Chittagong for ends of justice, otherwise the petitioners/accused persons shall suffer irreparable loss and damage, which may not be redressed later on by any means.
22. That it is submitted that the dispute between the parties is absolute of civil nature and the same has arisen out of a commercial contract, as such the present case of criminal nature is not maintainable in the eye of law. Hence, the further proceeding of the instant case may kindly be stayed for ends of justice.
23. That it is submitted that from the aforesaid complaint, it appears that there was a contractual relationship between the complainant-opposite party No. 2 and the accused-petitioner by executing deed of contract under several terms and conditions and the alleged cheque was one of those, which the complainant took from him as security. Under this event, the title of the cheque made defective for complainant in view of the provision of section 58 of the Act, which states as “*when a promissory note, bill of exchange or cheque has been lost or has been obtained from any maker, drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, neither the person who finds or so obtains the instrument nor any possessor or indorsee who claims through such person is entitled to receive the amount due thereon from such maker, drawer, acceptor or holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course*”. But the learned Court below hopelessly failed to consider this point and thereby committed error resulting in an error occasioning failure of justice. As such, the impugned order is liable to be set aside.
24. That it is submitted that the alleged dispute is clearly civil in nature and the same should be settled in civil jurisdiction as they made/done business transaction by executing deed of contract and no criminal case is maintainable in that regard. For that reason, initiation and continuation of criminal proceeding against the accused-petitioner certainly tantamount to abuse of process of court and the Hon’ble High Court Division has opined the same, which was reported in 56 DLR (2004) 169 held as “*The allegation as depicted in the complaint is an outcome of a typical partnership business transaction which is civil in nature and as such continuation of criminal proceeding against the petitioner certainly tantamounts to abuse of the court and law and, as such, it should be quashed*” and the similar view was settled by our Apex Court in several cases, some of which have been reported in 45 DLR

(AD) 27, 17 BLD (AD) 143 and 4 BLC (AD) 167. As such, the proceeding of the aforesaid case can not be allowed to go on/continue against the accused-petitioner. Hence, the impugned order is liable to be set aside.

25. That it is stated that in a similar matter, a Division Bench of the Hon'ble High Court Division comprising their Lordships Mr. Justice Obaidul Hassan and Ms. Justice Krishna Debnath made the Rule absolute of a Criminal Revision being No. 2530.2017 vide judgment and order dated 18.03.2018 held that—

“In the result the Rule is made absolute. The impugned judgment and order dated 11.09.2017 passed by the Additional Sessions Judge, 2nd Court, Brahmanbaria is set aside. The trial of Criminal Case No. 477 of 2010 in the Court of Additional Sessions Judge, 2nd Court, Brahmanbaria be postponed for a period of 06(six) months from the date of receipt of this judgment. Meanwhile both the parties be directed to move jointly or separately in the Court of Artha Rin Adalat, Brahmanbaria to arrange for early hearing and disposal of the Artha Execution Case 1 of 2014”.

26. That being aggrieved by and dissatisfied with the impugned order, the accused-petitioner begs to file this application before this Hon'ble Court for setting aside the aforesaid impugned order of the learned trial court on the following amongst other—

GROUND S

- I. For that the impugned order is bad in law as well as in facts and the same is liable to be set aside.
- II. For that in view of the provision of section 344 of the Code of Criminal Procedure, 1898 the court may, if it things fit, postpone or adjourn the proceeding of a case, by order in writing, stating the reason thereof, time to time. But in the instant case, the court below did not do so and rejected the aforesaid application without cogent reason, which clearly suffers from serious miscarriage of justice. Hence, the impugned order is liable to be set aside.
- III. For that under the circumstances, further continuation of this case may kindly be adjourned/stayed till disposal of the Declaration Suit No. 624 of 2016, pending before the learned 4th Joint District Judge, Dhaka and Other Suit No.677 of 2016, pending before 3rd Joint District Judge, Chittagong for ends of justice, otherwise the petitioners/accused persons shall suffer irreparable loss and damage, which may not be redressed later on by any means.
- IV. For that the dispute between the parties is absolute of civil nature and the same has arisen out of a commercial contract, as such the present case of criminal nature is not maintainable in the eye of law. Hence, the further proceeding of the instant case may kindly be stayed for ends of justice.
- V. For that from the aforesaid complaint, it appears that there was a contractual relationship between the complainant-opposite party No. 2 and the accused-petitioner by executing deed of contract under several terms and conditions and the alleged cheque was one of those,

which the complainant took from him as security. Under this event, the title of the cheque made defective for complainant in view of the provision of section 58 of the Act, which states as “*when a promissory note, bill of exchange or cheque has been lost or has been obtained from any maker, drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, neither the person who finds or so obtains the instrument nor any possessor or indorsee who claims through such person is entitled to receive the amount due thereon from such maker, drawer, acceptor or holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course*”. But the learned Court below hopelessly failed to consider this point and thereby committed error resulting in an error occasioning failure of justice. As such, the impugned order is liable to be set aside.

- VI. For that the alleged dispute is clearly civil in nature and the same should be settled in civil jurisdiction as they made/done business transaction by executing deed of contract and no criminal case is maintainable in that regard. For that reason, initiation and continuation of criminal proceeding against the accused-petitioner certainly tantamount to abuse of process of court and the Hon’ble High Court Division has opined the same, which was reported in 56 DLR (2004) 169 held as “*The allegation as depicted in the complaint is an outcome of a typical partnership business transaction which is civil in nature and as such continuation of criminal proceeding against the petitioner certainly tantamounts to abuse of the court and law and, as such, it should be quashed*” and the similar view was settled by our Apex Court in several cases, some of which have been reported in 45 DLR (AD) 27, 17 BLD (AD) 143 and 4 BLC (AD) 167. As such, the proceeding of the aforesaid case can not be allowed to go on/continue against the accused-petitioner. Hence, the impugned order is liable to be set aside.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to call for the records, issue Rule calling upon the opposite party to show cause as to why the order No. 9 dated 15.10.2018 passed by the learned Joint Metropolitan Sessions Judge, 4th Court, Chattogram in Sessions Case No. 3168 of 2018 arising out of C.R. Case No. 752 of 2016 (Pachlish Thana) under section 138 read with section 140 of the Negotiable Instruments Act, 1881 rejecting the application filed by the accused-petitioner under section 344 of the Code of Criminal Procedure, 1898 shall not be set aside, and after perusal of the records, cause shown, if any and after hearing the parties, be pleased to make the Rule absolute; and/or pass such other or further order or orders as your Lordships may seem fit and proper.

AND;

Pending hearing of the Rule, the further proceedings of Sessions Case No. 3168 of 2018 arising out of C.R. Case No. 752 of 2016 (Pachlish Thana) under section 138 read with section 140 of the Negotiable Instruments Act, 1881, now pending before the Joint Metropolitan Sessions Judge, 4th Court, Chattogram may kindly be stayed for ends of justice.

And for this act of kindness, the accused-petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Md. Sultan Khan, Son of late Mohammad Khan and late Saba Khatun of South Kattoli, Police Station- Pahartoli, District- Chittagong, aged about- 53 years, by faith Muslim, by profession- Business, by Nationality-Bangladeshi, National ID No. 1595511694516 do hereby solemnly affirm and say as follows:

01. That I am the paternal uncle of the accused-petitioner and *tadbirkar* of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Zarif Kabir)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Zarif Kabir)

Advocate

Membership # 6731

Hall Room No.2, Supreme

Court Bar Association Building

Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE COURT OF
LEARNED CHIEF METROPOLITAN MAGISTRATE, DHAKA.**

C. R. CASE No. 270 OF 2017*(Under Sections 147/148/323/327/427/380/447/448/506/109 of Penal Code, 1860)*

Jahid A Rahim, son of Abdur Rahman Mandal, of 102,
Purbo Basabo, Sabujbag, Dhaka.

..... **Complainant.**

-Versus-

Monjurul Islam and others.

..... **Accuseds.**

Gowtom Kumar Paul (AGM), Land Eastern Housing
Limited, of Corporate Office, 59/B, Kemal Atartuk
Avenue, Banani, Dhaka – 1213.

..... **Accused No. 3-Applicant.**

**Application on behalf of the accused No. 3 under
section 344 of the Code of Criminal Procedure, 1898
to adjourn/stay the further inquiry and continuation
of this case.**

The humble petition on behalf of the Accused No. 3-applicant states as follows:

1. That the complainant filed the instant case under sections 147/148/323/327/427/380/447/448/506/109 of Penal Code, 1860 alleging several false allegations against the accused persons stating inter alia that the accused persons tried to evict them from their land as described in the complain petition and also caused injury to his caretaker and loss to his property. After hearing the complain petition the case was sent for investigation.
2. That it appears from the documents submitted by the complainant that the complainant purchased the land as described in the complaint petition (*henceforth referred to as 'the disputed land'*) from the sellers by executing Registered Sale Deed No. 4570 dated 18.05.2017 (*shortly referred to as the 'said Sale Deed'*), and immediately after that he filed a GD on 20.06.2017 stating as follows—

“আমি এই মর্মে জানাচ্ছি যে, আমাদের ক্রয়কৃত নিম্ন তফসিল কৃত সম্পত্তি যাহা আমাদের নিজ দখলিয়। উক্ত সম্পত্তিতে অদ্য ২০/৬/১৭ ইং সকাল আনুঃ ১০.০০ ঘটিকা সময় ইষ্টার্ণ হাউজিং এর কিছু অজ্ঞাত লোকজন আসিয়া দখল করার জন্য আমাদের বাড়িভাড়া ওয়ালটি ভাংচুর করে ক্ষতি সাধন করে যার পরিমান আনুমানিক ২ (দুই) লক্ষ টাকা। এমতাবস্থায় আমরা থানাকে অবগত করিলে থানার হস্তক্ষেপে তাহারা পালিয়ে চয়ে যায়। ভবিষ্যতে তাহারা পূরণায় আরও কোন সমস্যা সৃষ্টি করতে পারে বিধায় বিষয়টি সাধারন ডাইরী ভুক্ত করা প্রয়োজন।

জমির তফসিল

এস. এ ও সি.এস দাগ নং ৫৩৪, ৫৫১, ৫৫২, ৭৭৪ আর. এস ১৪৫০, ১৪৫১, ১৪৫৩, ১৪৫৪ মহানগর জরিপ ৪৪০০, মৌজা মেরাদিয়া থানা হালে খিলগাঁও জমির পরিমাণ ২ একর ৮৪ শতাংশ মহানগর খারিজা নং জোত নং ১২২/৩৭ খতিয়ান নং ২৮৩৭ নাম জারি মোকদ্দমা নং ১১১২/১৩১৪।”

3. Subsequently on 17.08.2017, he filed this case stating as follows amongst others—

“অত্র মামলার বাদী এবং ২-৭ নং সাক্ষীগণ বিগত ১৮/০৫/২০১৭ ইং তারিখে খিলগাঁও সাব রেজিস্ট্রি অফিসে রেজিস্ট্রকৃত দলিল মূলে সর্বোচ্চ বাজার দর যাচাই করিয়া নিষ্কটক ও নির্ভেজাল ভূমি খরিদ করিয়া ভোগ দখলে থাকা অবস্থায় উক্ত সম্পত্তিতে সীমানা প্রাচীর নির্মাণ করিয়া উক্ত সীমানা প্রাচীরের ভিতরে বাদী এবং ২-৭ নং সাক্ষীগণের নিজস্ব ভূমিতে বহুতল ভবন নির্মাণের জন্য ইট, বালু, রড, সিমেন্ট জড়ো করেন এবং সেই খানে অত্র মামলার বাদীর কেয়ার টেকার অর্থাৎ অত্র মামলার ৮ নং সাক্ষীকে সম্পত্তি এবং মালামাল দেখাশুনা করার জন্য নিযুক্ত করেন। অতঃপর ঘটনার তারিখ ও সময়ে অর্থাৎ বিগত ২০/০৬/২০১৭ ইং তারিখে সকাল আনুমানিক ১০.০০ ঘটিকার সময় ১, ২, ও ৩ নং আসামীদের নির্দেশে অজ্ঞাতনামা আসামীরা হাতে আগ্নেয়াস্ত্র লোহার রড সহ দা, শাবল ও দেশীয় অস্ত্র সস্ত্র নিয়া অনুমান ২০/৩০ জন সন্ত্রাসী ১, ২, ও ৩ নং আসামীদের ভাড়াটিয়া সন্ত্রাসী বাদী ও ২-৭ নং সাক্ষীগণ ক্রয়কৃত অত্র মামলার ঘটনার ভূমিতে সন্ত্রাসী প্রকৃতির লোকজন অনাধিকার প্রবেশ করে। তাৎক্ষণাৎ বাদীর কেয়ার টেকার কে হাত, পা ও মুখ বাধিয়া বাদীর উক্ত ভূমির এক কোণায় ফেলিয়া রাখে। এক পর্যায়ে শাবল ও বিভিন্ন ভারী যন্ত্রপাতি দ্বারা বাদীর ভূমির সীমানা প্রাচীরের অনুমান ৬০ ফুট ভাঙ্গিয়া ফেলে। যাহা নির্মাণ করিতে বাদী এবং ২-৭ নং সাক্ষীগণের অনুমান দুই লক্ষ টাকা ব্যয় হইয়াছে এবং উক্ত দুই পক্ষ টাকার ক্ষতি সাধন করিয়াছে।

অতঃপর পরের দিন অর্থাৎ ২১/০৬/২০১৭ ইং তারিখ অজ্ঞাত নামা সন্ত্রাসী আসামীরা ১, ২, ও ৩ নং আসামীর নির্দেশে ঘটনাস্থলে ট্রাক নিয়া আসিয়া বাদীর ভবন নির্মাণের উদ্দেশ্যে স্তম্ভকৃত প্রায় ৪ (চার) লক্ষ টাকার সিমেন্ট ও রড নিয়া যায় এবং বাদীর কেয়ারটেকার কে শ্বাসরুদ্ধ করিয়া হত্যার ভয় দেখায় এবং তাহাকে চড়, খাপ্পড় ও কিল, ঘুষি মারিয়া মারাত্মক নীলাফুলা থেতলানো জখম করে এবং এই বলিয়া হুমকি দেয় যে, অত্র জায়গা ইস্টার্ন হাউজিং লিঃ জোর পূর্বক যে কোন মুহুর্তে দখল করিবে। বাদীকে যেন তার কেয়ার টেকার অবহিত করে এবং উক্ত কেয়ার টেকার যেন উক্ত ভূমিতে আর প্রবেশ না করে। করিলে ভবিষ্যতে তাকে হত্যা করিয়া লাশ গুম করে ফেলার হুমকি প্রদান করেন। অতঃপর আসামীরা ঘটনাস্থল ত্যাগ করে। আসামীদের উক্ত তাণ্ডব অত্র মামলার সাক্ষীগণ অবহিত আছে এবং স্থানীয় এলাকার জনগণ প্রত্যক্ষ করিয়াছে। অতঃপর বাদীর উক্ত কেয়ার টেকার অর্থাৎ অত্র মামলার ৮ নং সাক্ষী অত্র বিষয়ে বাদীকে মোবাইলে অবহিত করে। বাদী তাৎক্ষণাৎ অত্র মামলার সাক্ষীগণ সহ ঘটনাস্থলে যাইয়া অত্র বিষয়ে প্রত্যক্ষ করে এবং স্থানীয় ভাবে অত্র বিষয়ে মীমাংসার জন্য চেষ্টা করেন। কিন্তু দুই প্রকৃতির আসামীগণ প্রভাবশালী হওয়ায় বাদীকে হত্যার হুমকি প্রদান করায় বাদী নিরুপায় হইয়া ন্যায় বিচারের প্রত্যাশায় বিজ্ঞ আদালতের নিকট শরণাপন্ন হইলেন।”

4. That it appears from the aforesaid statements that the allegations of the complainant are absolutely false, *malafide*, ill-motivated, fake and fabricated. Moreover, without having any permission from the RAJUK, how he can start construction work of a multi-storied building in the suit land within this few months. The fact is, the accused person's company Eastern Housing Limited (*shortly referred to as the EHL*) is the owner and possessor of the suit land for more than 20 (twenty) years from the same sellers who are the ancestors of the sellers to the instant complaint vides the aforesaid Registered Sale Deed No. 4570 dated 18.05.2017. The complaint is very well aware of this fact. Despite knowing of the fact that the EHL is the owner and possessor of the said land, the complaint and the sellers of said land collusively executed the said Sale Deed with *malafide* intention to grab more money from the EHL and to harass the EHL along with the accused-applicants.

5. Moreover, regarding the same disputed land, a civil suit being Title Suit No. 576 of 2011 between the same parties (i.e. the sellers (bia) of the disputed land to the present complainant and the EHL) is pending before the learned Joint District Judge, 1st Court, Dhaka (*henceforth referred to as the Title Suit*). It is admitted by the complainant in the said Registered Sale Deed No. 4570 dated 18.05.2017 that the disputed land was purchased from the following sellers—
 - ১) নাম : মোঃ মোনতাজ হোসেন ভূইয়া (He is the defendant No. 2 in said Title Suit)
পিতার নাম : মৃত মহল আলী ভূইয়া,
মাতার নাম : মৃত শরফুন নেসা।
 - ২) নাম : মোসাঃ গোলাপ জান (She is the defendant No. 1(Cha) in said Title Suit)
স্বামীর নাম : মৃত নুরতাজ হোসেন ভূইয়া (The defendant No. 1 in said Title Suit)
পিতার নাম : মৃত আঃ আজিজ।
 - ৩) নাম : রহমত আলী ভূইয়া (She is the defendant No. 1(Ka) in said Title Suit)
পিতার নাম : মৃত নুরতাজ হোসেন ভূইয়া (The defendant No. 1 in said Title Suit)
মাতার নাম : গোলাপ জান বিবি।
 - ৪) নাম : ফাতেমা বেগম (She is the defendant No. 1(Umo) in said Title Suit)
স্বামীর নাম : মোঃ জালাল হোসেন,
পিতার নাম : মৃত নুরতাজ হোসেন ভূইয়া (The defendant No. 1 in said Title Suit)
 - ৫) নাম : রহিমা বেগম (She is the defendant No. 1(Kha) in said Title Suit)
স্বামীর নাম : ছাদেকুজ্জামান,
পিতার নাম : মৃত নুরতাজ হোসেন ভূইয়া (The defendant No. 1 in said Title Suit)
 - ৬) নাম : নুরনহার বেগম (She is the defendant No. 1(Gha) in said Title Suit)
স্বামীর নাম : আবু তাহের,
পিতার নাম : মৃত নুরতাজ হোসেন ভূইয়া (The defendant No. 1 in said Title Suit)
6. That moreso, in the said Title Suit, the said defendants and their successors appeared on 19.11.2015 and they are contesting the suit by filling filed written statement. In the said suit the EHL moved an application for injunction under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908, which was rejected by the learned court below vides Order No. 45 dated 10.08.2017, against which the EHL filed an appeal being F.M.A.T. No. 590 of 2017 corresponding to F.M.A. No. 212 of 2017 and also moved an application for injunction. After hearing the learned Advocate for the plaintiff-appellant-petitioner and perusing the documents, a Division Bench of the Hon'ble High Court Division was pleased to admit the appeal, issue Rule and pass an Order granting ad-interim injunction restraining the defendants-respondents-opposite parties from disturbing the peaceful possession of the plaintiff-appellant-petitioner for a period of 6 (six) months vide Order dated 7.09.2017.
7. That the aforesaid sellers to the complainant having knowingly well about the pendency of the said Title Suit very illegally, falsely and fraudulently created and executed the aforesaid sale deed which is forged, of no legal value and not tenable in the eye of law. Thus, the complainant has no legal right or lawful claim over the said land.
8. That under the aforesaid circumstances, since the said Title Suit is pending between the same parties (as stated above) regarding the same land in question and the Title Suit was filed on 4.07.2011 i.e. long before the filing of the instant criminal case (filed on

17.08.2017) and the title of the land to be decided thereon and injunction granted against the defendants on 7.09.2017 by the Hon'ble High Court Division, therefore the inquiry and further continuation of this case is liable to be adjourned/stayed till disposal of the said Title Suit under section 344 of the Code of Criminal Procedure, 1898. It is also decided by our Apex Court in several cases. For ready references, two quotations are provided below-

Jakir Hossain and others –vs- State and another, 43 DLR (AD) (1991) 102

“In the facts of this case as in point of time the civil suit was instituted before the filing of the FIR and the questioned documents in their originals are yet to be produced and examined by the Civil Court the criminal proceeding where those very documents are claimed by the informants as forged, may, in the interest of justice, be stayed till the disposal of the civil suit.”

Dhirendra Chandra –vs- Nani Gopal, 13 DLR (AD) (1961) 215

“Where, the decision in the civil suit is likely to have a direct and vital bearing upon the alleged guilt or render his prosecution, for all practical purposes, infructuous, the proper course is to keep the criminal case stayed.”

.....

“Having regard to the facts and circumstances disclosed, I am of opinion that, even apart from the question of improper pressure which, too, can by no means be definitely ruled out, there is also the chance of prejudice to the accused if the criminal case against him were allowed to proceed and be disposed of before the civil suit, and should the case thus and unfavourably to him, that adverse decision is likely to prejudice him in his defence in the civil suit as well. In these circumstances and also keeping in view the fact, civil suit has become ripe and has already been set down for positive hearing, I cannot see my way to interfere with the impugned order of stay which, on the other hand, appears to me to be fully justified.”

9. Under the circumstances, the inquiry and further continuation of this case may kindly be adjourned/stayed till disposal of the Title Suit No. 576 of 2011, pending before the learned Joint District Judge, 1st Court, Dhaka for ends of justice, otherwise the company EHL and the accused persons shall suffer irreparable loss and damage, which may not be redressed later on by any means.

Wherefore, it is most humbly prayed that Your Honour would graciously be pleased to adjourn/stay the inquiry and further continuation of this case till disposal of the Title Suit No. 576 of 2011, pending before the learned Joint District Judge, 1st Court, Dhaka for ends of justice and/or pass such other order/orders for granting further relief/reliefs as Your Honor deems fit and proper.

And for which act of kindness the plaintiff as in duty bound shall ever pray.

CHAPTER 14

Section 561A – Quashment

Section 561A saves inherent power for the High Court Division in the language “nothing in this Code shall be deemed to limit or affect the inherent power of the High Court Division to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.” It gives discretionary power only to the High Court Division. It is the original and exclusive jurisdiction of the High Court Division though it is known as ‘criminal miscellaneous jurisdiction’. Section 561A was not in the original statute. It was added in the year 1923. In the decision in the case of *Emperor vs. Khwaja Nazir Ahmed* reported in AIR 1945 Privy Council 18, it has been held that it is not correct to say that Section 561A has given increased powers to the Court which it did not possess before that Section was enacted. The Section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code of Criminal Procedure and that no inherent power had survived the passing of the Code. It is true that the inherent powers of the High Court Division have been recognized by insertion of Section 561A in the Code by Act No. 18 of 1923. Be that as it may, after its insertion in the Code, Section 561A has become an integral part thereof. It is not an isolated island. It is very much a part and parcel of the Code.¹

In the case of *Abdul Quader Chowdhury and others vs. The State* reported in 28 DLR (AD) 38, the Appellate Division has clearly spelt out the categories of cases where the High Court Division should interfere under Section 561A of the Code of Criminal Procedure. In that decision, the Appellate Division has observed as follows—

- (a) Interference even at an initial stage may be justified where the facts are so preposterous that even on the admitted facts, no case can stand against the accused;
- (b) Where institution or continuance of criminal proceedings against an accused person may amount to an abuse of the process of the Court or when the quashing of the impugned proceedings would secure the ends of justice;
- (c) Where there is a legal bar against institution or continuance of a criminal case against an accused person;
- (d) In a case where the allegations in the First Information Report or the Complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged and in such cases no question of weighing and appreciating evidence arises; and (e) The allegations made against the accused person do constitute an offence alleged; but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge.

1. Moulana Motiur Rahman Nizami vs. The State, 31 BLD 2011 HCD 28.

The above-mentioned categories of cases as spelt out by our Appellate Division in the decision reported in 28 DLR (AD) 38 have been subsequently followed in the case of Ali Akkas vs. Enayet Hossain and others reported in 17 BLD (AD) 44. In the case of Sher Ali (Md.) and others vs. The State reported in 46 DLR (AD) 67, the Appellate Division has held that the inherent power may be invoked independent of powers conferred by any other provisions of the Code of Criminal Procedure and this power may be exercised to quash a proceeding or even a conviction on conclusion of a trial if the Court concerned had no jurisdiction to hold the said trial or the facts alleged against the accused do not constitute any criminal offence, or the conviction has been based on 'no evidence' or otherwise to secure the ends of justice.

Sample

DISTRICT: DHAKA.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. OF 2018.

IN THE MATTER OF:

An application under Section 561A of the Code of Criminal Procedure, 1898.

AND

IN THE MATTER OF:

Mehedi Hasan, son of Abdur Rashid, Director of M/s. PK Distilleries and Chemicals Limited, (at present-resigned from the post of director), of 36, Kamal Atarturk Avenue, Delta Dahlia Apartment No. 7 B, Banani, Dhaka-1213.

---- Accused-Petitioner.

(On Bail)

-Versus-

1. The State
2. Md. Yeakub Ali, on behalf of Bangladesh Shilpo Rin Shangstha, son of Aziza Rahman, Assistant General Manager, Ain Upo-Bibhag-1, Bangladesh Shilpo Rin Shangstha, Head Office, BSRS Bhaban, 12 Kawran Bazar, Thana- Tejgaon, District- Dhaka-1215.

---- Opposite Parties.

AND**IN THE MATTER OF:**

Quashing the entire proceeding of Sessions Case No. 14734 of 2017 arising out of C.R. Case No. 1609 of 2008 (North) under sections 138 and 140 of the Negotiable Instruments Act, 1881, now pending in the Court of learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the this Supreme Court of Bangladesh.

The humble Petition of the petitioner most respectfully—

S H E W E T H :

1. That this application under section 561A of the Code of Criminal Procedure, 1898 has been filed for quashing the entire proceeding of Sessions Case No. 14734 of 2017 arising out of C.R. Case No. 1609 of 2008 (North) under sections 138 and 140 of the Negotiable Instruments Act, 1881, now pending in the Court of learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka.
2. That the accused-petitioner is law abiding, peace loving and permanent citizen of the country; and he comes from a respectable Muslim family.
3. That the prosecution case in brief is that the opposite party No. 2 being the complainant filed the instant case stating inter alia that M/s PK Distilleries and Chemicals Limited obtained loan from the complainant institute, and till 31.03.2007 the total amount remained outstanding Tk. 15,90,51,097/-. For repayment of the loan the Managing Director of the Company namely Md. Hasibul Bashir on 31.03.2008 issued the cheque in question, which was dishonoured due to insufficient fund. Thereafter, the complainant sent legal notice on 10.03.2008, which was received by the other accused. Subsequently, the complainant filed this case. Certified copy of the complainant petition is annexed hereto and marked as **Annexure- "A"**.
4. That thereafter, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 by the Court of learned Chief Metropolitan Magistrate, Dhaka and consequently, the learned Magistrate, Dhaka took cognizance of offence against the accused-petitioner under sections 138 and 140 of the Negotiable Instruments Act, 1881 and issued summons against the petitioner. Certified copy of the order sheet of the learned Magistrate Court are annexed hereto and marked as **Annexure- "B Series"**.

5. Thereafter, the case was transferred to the learned Metropolitan Sessions Judge, Dhaka who sent the case to the Additional Metropolitan Sessions Judge, 3rd Court, Dhaka for holding trial, whereupon the case is now pending for framing charge. The petitioner voluntarily surrendered before the trial court and obtained bail on 30.08.2017. Certified copies of the order sheets of the trial court are annexed hereto and marked as **Annexure- “C Series”**.
6. That it is stated that the instant case was filed on 11.05.2008 alleging that the instant petitioner is a Director of M/s PK Distilleries and Chemicals Limited. But the fact is that, the petitioner resigned from the post of director of the said company on 10.01.2007 by transferring his entire shares, which is very much evident Form XII and Schedule X of the relevant year and also from the subsequent years. Photocopies of Form XII and Schedule X of the relevant year and subsequent years are annexed hereto and marked as **Annexure- “D Series”**.
7. That it is stated that the petitioner is neither the borrower of the loan nor the signatory of the said cheque in question. Moreover, he is not involved with the company namely M/s. PK Distilleries and Chemicals Limited who is the borrower of the said loan. Likewise, he was not in the company either as a shareholder or as a director at the time of issuing the cheque. Photocopies of the cheque, dishonor slip, legal notice and postal receipt are annexed hereto and marked as **Annexure- “E Series”**.
8. That it is submitted that since the petitioner was not in charge of the said company at the time of commission of the offence and he was not involved for the conduct of the business and affairs of the company, therefore he shall not be deemed to be guilty of the offence under section 138 read with 140 of the Negotiable Instruments Act, 1881. Hence, the proceeding of the instant case should be set aside for ends of justice.
9. That it is submitted that there must be specific accusation against each of the persons impleaded that such person was in charge of and responsible for the conduct of the business of the company at the relevant time when offence was committed by the company. In the entire body of the complaint no assertion has been made that the accused petitioner at the relevant time was responsible or was in day-to-day affairs or was in know of or taking part in issuing the cheque on behalf of the Company. The accused petitioner made out a case within section 140(1) of the Act and if this proceeding is allowed to continue against him that will not give any fruitful result to the complainant and that will perpetuate an injustice to the accused petitioner which will defeat ends of justice and to secure ends of justice, the proceeding against the accused petitioner being an abuse of process of the Court, there is no other alternative but to quash the proceeding against the accused petitioner. Hence, the proceeding of the instant case should be set aside for ends of justice.
10. That it is submitted that since the petitioner is in no way involved with the allegations made in the complaint petition and there is no specific averment made against him by the complainant in the complaint petition, therefore the initiation and continuation of the case against the petitioner is absolutely an abuse of the process of the court. Hence, the proceeding of the instant case should be set aside for ends of justice.

11. That it is submitted that the complaint petition does not disclose any case under section 138 and 140 of the Negotiable Instruments Act, 1881 because in the petition there is no statement disclosing the reasons and causes as to why the alleged cheques along with some other cheques were issued by the petitioner to the opposite party No. 2; as such the alleged cheque is obtained without any consideration from the part of the complainant-opposite party. Therefore, the alleged cannot be treated as a negotiable instrument under section 138 and 140 of the said Act. Hence, the proceeding of the instant case should be set aside for ends of justice.
12. That the accused-petitioner craves leave of this Hon'ble Court to swear affidavit of the photocopies of the annexure 'D-Series' & 'E-Series'. The accused-petitioner assured that the photocopies of the said annexures are genuine, correct and true reflection of originals, which is kept under the petitioners. Accordingly, the learned Advocate of the accused-petitioner have duly attested those papers duly.
13. That in view of the foregoing facts and circumstances as mentioned above, being aggrieved by and dissatisfied with the entire proceeding of Sessions Case No. 14734 of 2017 arising out of C.R. Case No. 1609 of 2008 (North) under sections 138 and 140 of the Negotiable Instruments Act, 1881, the accused-petitioners begs to move this application before the Hon'ble High Court Division for quashing on the following amongst other-

-G R O U N D S-

- I. For that since the petitioner was not in charge of the said company at the time of commission of the offence and he was not involved for the conduct of the business and affairs of the company, therefore he shall not be deemed to be guilty of the offence under section 138 read with 140 of the Negotiable Instruments Act, 1881. Hence, the proceeding of the instant case should be set aside for ends of justice.
- II. For that there must be specific accusation against each of the persons impleaded that such person was in charge of and responsible for the conduct of the business of the company at the relevant time when offence was committed by the company. In the entire body of the complaint no assertion has been made that the accused petitioner at the relevant time was responsible or was in day-to-day affairs or was in know of or taking part in issuing the cheque on behalf of the Company. The accused petitioner made out a case within section 140(1) of the Act and if this proceeding is allowed to continue against him that will not give any fruitful result to the complainant and that will perpetuate an injustice to the accused petitioner which will defeat ends of justice and to secure ends of justice, the proceeding against the accused petitioner being an abuse of process of the Court, there is no other alternative but to quash the proceeding against the accused petitioner. Hence, the proceeding of the instant case should be set aside for ends of justice.
- III. For that since the petitioner is in no way involved with the allegations made in the complaint petition and there is no specific averment made against him by the complainant

in the complaint petition, therefore the initiation and continuation of the case against the petitioner is absolutely an abuse of the process of the court. Hence, the proceeding of the instant case should be set aside for ends of justice.

- IV. For that the complaint petition does not disclose any case under section 138 and 140 of the Negotiable Instruments Act, 1881 because in the petition there is no statement disclosing the reasons and causes as to why the alleged cheques along with some other cheques were issued by the petitioner to the opposite party No. 2; as such the alleged cheque is obtained without any consideration from the part of the complainant-opposite party. Therefore, the alleged cannot be treated as a negotiable instrument under section 138 and 140 of the said Act. Hence, the proceeding of the instant case should be set aside for ends of justice

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue Rule calling upon the opposite parties to show cause as to why the entire proceeding of Sessions Case No. 14734 of 2017 arising out of C.R. Case No. 1609 of 2008 (North) under sections 138 and 140 of the Negotiable Instruments Act, 1881, now pending in the Court of learned Additional Metropolitan Sessions Judge, 3rd Court, Dhaka, shall not be quashed, call for the records; and on cause shown if any, and after hearing the parties, make the Rule absolute and/or pass such other or further order or orders as your Lordships may deem fit and proper.

AND

Pending hearing of the Rule, all further proceeding of Sessions Case No. 14734 of 2017 arising out of C.R. Case No. 1609 of 2008 (North) under sections 138 and 140 of the Negotiable Instruments Act, 1881 may kindly be stayed for ends of justice.

And for this act of kindness, the accused-petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Md. Golam Mostafa, Son of Md. Abdul Mannan and Mst. Sakina, of House No. 44/J, Indira Road, Post Office: Tejgaon-1215, Tejgaon, Dhaka City Corporation, Dhaka aged about 35 years, by faith Muslim, by profession- service, by Nationality-Bangladeshi being National ID No. 2699040696079 do hereby solemnly affirm and say as follows :

01. That I am the *tadbirker* of this case being cousin-brother of the accused-petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shahadat Hossain)

Advocate

Membership # 6731

Hall Room No. 2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT: MYMENSINGH.
**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. OF 2019.

IN THE MATTER OF:

An application under section 561A of the Code of
Criminal Procedure, 1898.

AND**IN THE MATTER OF :**

Md. Lutfar Rahman, son of late Rajjab Ali, of Village-Kakra Pathanpur, Post Office: Bindhara, Upazila-Panchbibi, District- Joypurhat.

.....**Accused-petitioner.**

(On bail)

VERSUS

The State

.....**Opposite Party.**

AND**IN THE MATTER OF:**

Quashing the judgment and order dated 04.03.2019 passed by the learned Court of Additional Sessions Judge, Joypurhat in Criminal Revision Case No. 35 of 2013 rejecting the revision application and thereby affirming the Order No. 25 dated 09.07.2013 passed by the learned Court of Senior Judicial Magistrate, Joypurhat rejecting the discharge application of the petitioner and thereby framing charge against him under sections 325/114/143/447 of Penal Code, 1860 in Panchbibi Police Station Case No. 3 dated 03.06.2010 corresponding to G.R. Case No. 113 of 2010 (Panch.) now pending in the Court of learned Senior Judicial Magistrate, Joypurhat.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner most respectfully.

SHEWETH :

1. That this application filed under section 561A of the Code of Criminal Procedure, 1898 challenging judgment and order dated 04.03.2019 passed by the learned court of Additional Session Judge, Joypurhat in Criminal Revision Case No. 35 of 2013 rejecting the revision application and thereby affirming Order No. 25 dated 09.07.2013 passed by the learned court of Senior Judicial Magistrate, Joypurhat, in G.R. Case No. 113 of 2010 rejecting the

discharge application of the accused-petitioner and thereby framing charge against him under sections 325/114/143/447 of Penal Code, 1860 in Panchbibi Police Station Case No. 03 dated 03.06.2010, now pending in the court of learned Senior Judicial Magistrate, Joypurhat.

2. That the prosecution case in brief is that the plaintiff's father is the rightful owner of the land and crops grown thereon. Accused persons do not have any sort of title or possession of the property. On 21.03.2010 the plaintiff along with others were working on the field of their land when at about 09.00 hours the accused Nos. 1-10 unlawfully trespassed at the field being armed with shovel, iron rod, sticks, axe etc. in order to cause violence and disturbance. The accused No. 1 told the other accused to 'end the life' of the plaintiff and his companions who are also the witnesses of the case. Then the accused No. 2 hit hardily in the head of the witness No. 1 with a shovel in order to kill him which caused him a deep cut and bloodshed in his head. Thereafter accused No. 3 tied his throat with a towel and pulled in both the sides in order to block his breathing so as to kill him. Accused No. 5 hit the plaintiff with a stick in his chest and back which caused him grievous harm and pain. After hearing the plaintiff screaming witness No. 3, wife of witness No. 1 Mst. Sahena Khatun came into the place of occurrence. Along with the witness No. 2 Md. Lajem Ali the witness No. 3 tried to save witness No. 1 and then the accused No. 4 Badsha hit with an iron rod in the right wrist of witness No. 1 which rendered his wrist broken. Then accused No. 5 hit witness No. 3 viciously all over her body and caused serious pain. Accused No. 6 hit witness No. 2 all over his body causing him serious pain. Hearing the scream of witness Nos. 1, 2 & 3, witness Nos. 4 & 5 came and tried to save witness Nos. 2 & 3. Then accused No. 2 hit witness No. 1 in the head with a shovel in order to kill him but witness No. 1 tried to block it with his right hand which rendered his right hand broken. Under such circumstance accused Nos. 7, 8 & 9 pulled the clothes of witness Nos. 3/5, accused No. 7 grabbed hairs of witness No. 3 and accused No. 9 pulled and jerked witness Nos. 3/5 by grabbing their hairs; thereby the accused humiliated the witness No. 3/5. The accused No. 10 violently punched and gave a blow to witness No. 4. Thereafter hearing the scream of the plaintiff and witnesses a number of local people started gathering at the place of occurrence and the accused then fled from the place. After the aforesaid incident the physical condition of witness Nos. 1, 2 & 3 deteriorated and they were sent to the nearby Ghoraghat Upazila Health Complex by the van of witness No. 6. There in the hospital the witness No. 2 was admitted till 24.03.2010 and witness No. 3 was admitted till 23.03.2010. Witness No. 1 was still admitted when the ejahar was filed. Hence, the case. Certified copy of the said First Information Report (FIR) is annexed hereto and marked as **Annexure- "A"**.
3. That after a perfunctory investigation, the investigating officer filed Charge Sheet being No. 152 dated 27.08.2010 under sections 143/447/323/325/354 of Penal Code, 1860. However, the investigating officer stated to have found no evidence of involvement against the accused-petitioner and prayed for discharging him from the case by not sending him up in charge sheet. Certified copy of the Charge Sheet dated 27.08.2010 is annexed hereto and marked as **Annexure- "B"**.

4. That it is stated that since the investigating officer removed the name of the accused-petitioner from the Charge Sheet, the complainant filed a Time Petition dated 04.11.2010 for filing a Naraji Petition. Consequently the complainant filed a Naraji Petition dated 06.12.2010 to the learned court below contesting accused-petitioner's removal from the charge sheet on the ground that there was no specific reason written in the Charge Sheet as to why the name of the accused-petitioner has removed. Certified copies of the Time Petition dated 04.11.2010 and Naraji Petition dated 06.12.2010 are annexed hereto and marked as **Annexure- "C" and "C1"**
5. That it is stated that the learned court of Senior Judicial Magistrate, Joypurhat, granting the said Naraji Petition of the complainant, ordered for a Judicial Investigation in which the court found proof of the allegations brought against the accused-petitioner and was pleased to frame charge against the accused-petitioner under sections 325/114/143/447 of the Penal Code, 1860 vide order No. 25 dated 09.07.2013. Certified copy of the order dated 09.07.2013 is annexed hereto and marked as **Annexure- "D"**.
6. That it is stated that being aggrieved by the order of the learned court of Senior Judicial Magistrate, Joypurhat, the petitioner filed a Criminal Revision No. 35 of 2013 before the learned court of District and Session Judge, Joypurhat. Certified copy of the application for the Criminal Revision No. 35 is annexed hereto and marked as **Annexure- "E"**.
7. That it is stated that subsequently the Criminal Revision was sent to the learned court of Additional Session Judge, Joypurhat. After hearing the revision application, the learned court rejected the said application and affirmed the order of the learned court of Senior Judicial Magistrate, Joypurhat. Certified copy of the order dated 04.03.2019 in the Criminal Revision No. 35 is annexed hereto and marked as **Annexure- "F"**.
8. That it is stated that there is no relationship between the complainant and the accused-petitioner other than their political-rivalry. The complainant is a Member of the UP. The accused-petitioner is an ex-principal of a local high-school and he has also been Chairman of the UP for three consecutive terms. The instant case is brought against the accused-petitioner only harass him and to humiliate his social and political reputation.
9. That it is stated that the accused-petitioner has no interest or affiliation with the disputed land. The complainant fraudulently and malafide brought the allegations against the accused-petitioner.
10. That it is submitted that the complainant-informant has filed the case against the accused-petitioner only for the purpose of harassing and humiliating him socially and politically. The learned Senior Judicial Magistrate without properly inquiring into the facts and circumstances relied only upon the Naraji Petition of the complainant and the iniquitous police investigation report and rejected the accused-petitioner's discharge application; as such the impugned proceeding is liable to be quashed for ends of justice.
11. That it is submitted that neither the FIR nor the charge sheet support the injuries so as to construe any offence under sections 325/114/143/447 of Penal Code, 1860; as such this case is of no evidence, and the allegations are vexatious, frivolous and false. There was no evidence of the allegations brought against the accused-petitioner as mentioned in the

Charge Sheet. But, the learned trial court below as well as the revisional court failed to apply their judicial mind and framed charge against the accused-petitioner. As such the impugned proceeding is liable to be quashed for ends of justice.

12. That it is submitted that since the FIR and charge sheet do not disclose any offence under sections 325/114/143/447 of Penal Code, therefore this case has no merit and its continuation would be an abuse of process of the court and ruin the valuable time and effort of the court. As such the proceeding is not sustainable in the eye of law. Therefore, the impugned proceeding is liable to be quashed for the ends of justice.
13. That it is submitted that the learned court below failed to apply its judicial mind while granting the Naraji Petition dated 06.12.2010 as the complainant contested the removal of the name of the accused-petitioner from the charge sheet merely because there was no specific reason stated for such removal. The learned court below completely and very miserably disregarded the fact that the investigating officer found no evidence of affiliation against the accused-petitioner regarding the allegations. As such, the impugned proceeding is liable to be quashed for the ends of justice.
14. That it is submitted that during the hearing of charge, the accused-petitioner raised the detail facts before the learned trial court by filing discharge application. But unfortunately, the learned trial court neither considered the grounds taken by the accused-petitioner in the discharge application nor perused the statements recorded by the investigating officers and framed charge against the accused-petitioners without applying judicial mind. Hence, the prosecution has been initiated for improper motives merely to harass the accused-petitioner and therefore its continuance would be an abuse of process of the court, hence for the ends of justice the impugned proceeding is liable to be quashed.
15. That it is submitted that the learned court below completely failed to identify the contradictory mentions of the date of occurrence as it is stated in the FIR that the date of occurrence is 22.03.2010, whereas in the statement made by the complainant it is mentioned as 21.03.2010. Moreover, the revisional court failed to look into and determine the reason of the time gap between the alleged date of occurrence and filing of the complaint on 03.06.2010. This mysterious delay of filing the complaint reflects ill-motive on the part of the complainant because the complainant having intention to make up a false case took time to conspire against the accused-petitioner only to harass his social and political reputation. As such the complainant initiated this false case, relying upon which the learned Court of Senior Judicial Magistrate, Joypurhat wrongfully framed the charge against the accused-petitioner which the revisional court later affirmed. Hence, the impugned proceeding is liable to be quashed for the ends of justice.
16. That it is submitted that there is no relationship between the complainant and the accused-petitioner other than their political-rivalry. Also the accused-petitioner has no interest in the disputed land. But the complainant brought a false case against the accused-petitioner only to harass him and humiliate his social and political reputation. As such, for the ends of justice this impugned proceeding is liable to be quashed.

17. That being aggrieved by and dissatisfied with the proceedings of the impugned case the petitioner begs to move this application for quashing the proceeding on the following amongst other—

GROUND S

- I. For that the complainant-informant has filed the case against the accused-petitioner only for the purpose of harassing and humiliating him socially and politically. The learned Senior Judicial Magistrate without properly inquiring into the facts and circumstances relied only upon the Naraji Petition of the complainant and the police investigation report and rejected the accused-petitioner's discharge application; as such the impugned proceeding is liable to be quashed for ends of justice.
- II. For that neither the FIR nor the charge sheet support the injuries so as to construe any offence under sections 325/114/143/447 of Penal Code, 1860; as such this case is of no evidence, and the allegations are vexatious, frivolous and false. There was no evidence of the allegations brought against the accused-petitioner as mentioned in the Charge Sheet. But, the learned trial court below as well as the revisional court failed to apply their judicial mind and framed charge against the accused-petition. As such the impugned proceeding is liable to be quashed for ends of justice.
- III. For that since the FIR and charge sheet do not disclose any offence under sections 325/114/143/447 of Penal Code, therefore this case has no merit and its continuation would be an abuse of process of the court and ruin the valuable time and effort of the court. As such the proceeding is not sustainable in the eye of law. Therefore, the impugned proceeding is liable to be quashed.
- IV. For that the learned court below failed to apply its judicial mind while granting the Naraji Petition dated 06.12.2010 as the complainant contested the removal of the name of the accused-petitioner from the charge sheet merely because there was no specific reason stated for such removal. The learned court below completely and very miserably disregarded the fact that the investigating officer found no evidence of affiliation against the accused-petitioner regarding the allegations. As such, the impugned proceeding is liable to be quashed for the ends of justice.
- V. For that during the hearing of charge, the accused-petitioner raised the detail facts before the learned trial court by filing discharge application. But unfortunately, the learned trial court neither considered the grounds taken by the accused-petitioner in the discharge application nor perused the statements recorded by the investigating officers and framed charge against the accused-petitioners without applying judicial mind. Hence, the prosecution has been initiated for improper motives merely to harass the accused-petitioner and therefore its continuance would be an abuse of process of the court, hence for the ends of justice the impugned proceeding is liable to be quashed.
- VI. For that the learned court below completely failed to identify the contradictory mentions of the date of occurrence as it is stated in the FIR that the date of occurrence is 22.03.2010, whereas in the statement made by the complainant it is mentioned as 21.03.2010.

Moreover, the revisional court failed to look into and determine the reason of the time gap between the alleged date of occurrence and filing of the complaint on 03.06.2010. This mysterious delay of filing the complaint reflects ill-motive on the part of the complainant because the complainant having intention to make up a false case took time to conspire against the accused-petitioner only to harass his social and political reputation. As such the complainant initiated this false case, relying upon which the learned Court of Senior Judicial Magistrate, Joypurhat wrongfully framed the charge against the accused-petitioner which the revisional court later affirmed. Hence, the impugned proceeding is liable to be quashed for the ends of justice.

- VII. For that there is no relationship between the complainant and the accused-petitioner other than their political-rivalry. Also the accused-petitioner has no interest in the disputed land. But the complainant brought a false case against the accused-petitioner only to harass him and humiliate his social and political reputation. As such, for the ends of justice this impugned proceeding is liable to be quashed.
- VIII. For that the complainant brought a false, frivolous, malafide and vexatious case against the accused-petitioner. Hence, the impugned proceeding is liable to be quashed for the ends of justice.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue Rule calling upon the opposite party to show-cause as to why the impugned judgment and order dated 04.03.2019 passed by the learned Court of Additional Sessions Judge, Joypurhat in Criminal Revision Case No. 35 of 2013 rejecting the revision application and thereby affirming the Order No. 25 dated 09.07.2013 passed by the learned Court of Senior Judicial Magistrate, Joypurhat, rejecting the discharge application of the petitioner and thereby framing charge against him under sections 325/114/143/447 of Penal Code, 1860 in Panchbibi Police Station Case No. 3 dated 03.06.2010 corresponding to G.R. Case No. 113 of 2010 (Panch.) under section 143/447/323/325/354 of Penal Code, 1860, now pending in the Court of learned Senior Judicial Magistrate, Joypurhat, shall not be quashed, call for the records and cause shown if any, after hearing the parties, make the Rule absolute and or pass such other or further order or orders as your Lordships may deem fit and proper.

AND

Pending hearing of the Rule, proceeding of the aforesaid case may kindly be stayed for ends of justice.

And for this act of kindness, the accused-petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Md. Lutfar Rahman, son of late Rajjab Ali and Mazia Begum, of Village- Kakra Pathanpur, Post Office: Bindhara, Upazila- Panchbibi, District- Joypurhat, by profession- Businessman by nationality- Bangladeshi, National ID No. do hereby solemnly affirm and say as follows:

1. That I am the petitioner of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me this in the
Supreme Court premises on th day
of, 201

DEPONENT

The deponent is known to me and
identified by me.

Advocate

Membership No.

Hall Room No. 2, Supreme Court
Bar Association, Shahbagh, Dhaka.

Mobile :

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT- MYMENSINGH:

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

**CRIMINAL MISCELLANEOUS
CASE NO. OF 2019**

IN THE MATTER OF:

An application under section 561A of the Code of
Criminal Procedure, 1898.

AND**IN THE MATTER OF:**

- (i) Md. Mohiuddin, son of Abdul Gofur;
- (ii) Hasna Begum, wife of Md. Mohiuddin of village-Bardanpara, Police Station- Nababgonj, District - Dhaka.

..... **Accused-petitioner.**
(On bail)

-VERSUS-

- (i) The State
- (ii) Md. Rezwan Al Hoque, son of Abdur Rahim and Rasheda Begum, of 68, West Badda, House No. 19, Dhaka.

..... **Opposite Party.**

AND**IN THE MATTER OF :**

Quashing the entire proceeding of C.R. Case No. 403 of 2018 under sections 420/406/467/468/469/471/34 of Penal Code 1860, now pending before the learned Chief Judicial Magistrate, Dhaka.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Honble Court.

The humble petition of the above named accused-petitioner most respectfully;

S H E W E T H :

1. That this application has been filed under section 561A of the Code of Criminal Procedure, 1898 challenging the entire proceeding of C.R. Case No. 403 of 2018 under sections 420/406/467/468/469/471/34 of Penal Code 1860, now pending before the learned Chief Judicial Magistrate, Dhaka.
2. That the prosecution case in short is that Md. Rezwan Al Hoque being a complainant filed a C.R. case under sections 420/406/467/468/469/471/34 of Penal Code 1860 against the accused-petitioners alleging *inter-alia* that the accused-petitioners having prepared a forged deed i.e. Deed of Sale No. 8988 dated 15.8.1990, and being a Mutation case no. 6665 (সদর) /17-18 released the property of land measuring 11 decimal under R.S. Khatian no. 419, dag no. 602 and S.A. Khatian no. 241, dag no. 520, Mouza-Bordan Para, Thana-Nobabgonj, District-Dhaka and mutated their names from the Assistant Commissioner land office of Nobabgonj Thana, Dhaka, whereas the said scheduled land actually belong to Md. Rezwan Al Hoque as he got the property by way of inheritance. Subsequently, the accused-

petitioners forcefully tried to possess the property and showed a photocopy of the said deed to the complainant. Thereafter, the Complainant investigated regarding the forged deed in the concerned S.R. Office, Badda wherefrom on 18.09.2018 being Title Search Report No. 14 it was confirmed that deed no. 8988 is not existed and recorded at the main volume book list in the year of 1990, where the last registered deed was 5850, as such the said deed is forgery prepared to illegally occupy the scheduled property. Certified copy of the said petition of complaint is annexed hereto and marked as **ANNEXURE- “A”**.

3. That on 25.10.2018, in accordance with the court's instruction, reference no. Dhaka/Court/402-2018/1593/1(2) dated 25.10.2018, Md. Motiur Rahman, BP no. 6289020930, Special Police Officer, CID, Dhaka assigned Md. Harun Ar Rashid, BP no. 7806112391, Police Inspector, Bangladesh Police, CID, Dhaka to investigate and submit the report of the said C.R. case to the learned court. Photocopy of the letter dated 25.10.2018 is annexed hereto and marked as **ANNEXURE- “B”**.
3. That on 30.10.2018, on behalf of the complainant Md. Harun Ar Rashid, Police Inspector sent a Fax to Nobabgonj Thana, Dhaka, referring the said C.R. case summoned the witnesses i.e. (i) Mr. Shahin and (ii) Mr. Atiar Rahman to appear on 11.11.2018 at 10 p.m. at CID office, Malibag. Photocopy of the letter dated 30.10.2018 is annexed hereto and marked as **ANNEXURE- “C”**.
4. That on 18.11.2018, Md. Harun Ar Rashid, Police Inspector, Bangladesh Police, CID, Dhaka made an application to the District Register, Tejgoan Registration Complex, Dhaka, referring the said C.R. case to enquire for details regarding the concerned deed no. 8988 dated 15.08.1990 and the officer asked for to provide one certified copy of the said deed from Balam book's catalogue. Photocopy of the application dated 18.11.2018 is annexed hereto and marked as **ANNEXURE- “D”**.
5. That on 28.11.2018, the Sub-Register, Sadar Record Room, Dhaka, sent letter to Md. Harun Ar Rashid, BP No. 7806112391, referring the C.R. case confirmed that the concerned deed no. 8988 of 1990 is not found in the Balam Book No. 77 of 1990 of Nobabgonj Sab-Registry office, as such no certified copy of this said deed was not provided to anyone. However, in this letter it was also confirmed that the said Balam Book No. 77 was damaged as such they could not provide any other information in this regard. Photocopy of the application dated 18.11.2018 is annexed hereto and marked as **ANNEXURE- “E”**.
6. That on 03.01.2019, the assigned Police Inspector, Md. Harun Ar Rashid, submitted the investigation report of the said C.R. case to learned Judicial Magistrate Court, Amtoli Adalat, Nobabgonj, Dhaka, where it was stated that the concerned deed no. 8988 of 1990 is fabricated and forged with the intention to illegally possess the scheduled land which was actually belong to the complainant. In addition, the said investigating Police Officer also took the witness statements of (i) Md. Atiur Rahman and (ii) Sushil Pal, whose are also confirmed that the disputed land measuring 15.75 decimal belong to the complainant as he got the property by way of inheritance. Here, it is submitted that the accused-petitioner, Md. Mohiuddin before filed a case being the C.R case no. 190/2018 relying on sections 143/323/307/385/386/447/448/506/34/114 of penal code 1860 to harass the complainant; thereafter the accused-petitioners made a forged deed 8988 dated 15.08.1990 to illegally possess the disputed land which is not existed and recorded in the Balam Volume

Book no. 77 of 1990 of Nobabgonj Sub-Registry office. Hence, it is submitted that total 5900 deeds were registered at Nobabgonj Sub-Registry office in 1990, and the said Sub-Registry office did not provide the certified copy of the said deed to the accused-petitioners and since the Balam Book no. 77 of Nobabgonj Sub-Registry is damaged as such any supplementary information unable to provide by the Sub-Registry office. Photocopy of the Police Investigation Report dated 3.01.2019 is annexed hereto and marked as **ANNEXURE- “F”**.

7. That the accused-petitioners applied before the learned Chief Judicial Magistrate Court, Dhaka seeking discharge from the said C.R. case relying on section 241 A of the Code of Criminal Procedure, 1898 stating that the complainant's allegation is a civil nature suit and the said C.R. case sections are fabricated whose are illegally inserted against the accused-petitioners. In addition, the accused-petitioners being স্মারক নং উঃডুঃআঃ/নবাবগঞ্জ/২০১৮/৮৭৯ (০৪) তারিখ ০৪.০৬.২০১৮ under R.S. Sabek 504 Hal 241 corresponding dag no. 520 out of 31 decimal leased 10 decimal land and paying the rent accordingly and thereafter the accused-petitioners under dag no. 520 of S.A. Khatian Sabek 504 Hal 204 and S.A. Khatian 419, purchased total land measuring 11 decimal from the recorded owner Tilottoma Sundori; however the complainant's father got 5.57 decimal land from (i) Sunil Chandra Pal and (ii) Nowronjon Chandra Pal under the same boundary of the scheduled, hence the complaint has not any lawful title over the disputed land either. Photocopy of the 241A application is annexed hereto and marked as **Annexure- “G”**.
10. That it is submitted that the complainant-informant has filed the case against the accused-petitioners only for the purpose of harassing and humiliating them since they have claimed their legal rights of purchasing of possession of the shops in the Ismail Mansion Super Market. The investigating officers who investigated into the case in field found no evidence in support of the prosecution case on two occasions; and consequently, they filed final reports consecutively; but the learned Metropolitan Magistrate, Dhaka without visiting the place of occurrence and also without considering the facts and circumstances, relied upon the judicial inquiry witnesses who were examined in the Court and filed inquiry report stating that he found primaface case against the accused-petitioners. Such kind of inquiry cannot override the earlier investigation reports; and consequently, the impugned proceeding is liable to be quashed.
11. That it is submitted that during the course of hearing on charge matters, the accused-petitioners raised the detail facts before the learned trial Court by filing discharge application. But unfortunately, the learned trial Court neither considered the grounds taken by the accused-petitioners in the discharge application nor perused the statements recorded by the investigating officers and framed charge against the accused-petitioners without applying judicial mind. Hence, the impugned proceeding is liable to be quashed.
12. That it is submitted that since there are civil litigation pending between the parties, the criminal proceeding should not be allowed to proceed before disposal of the civil litigations; and such kind of preposterous criminal case is clear abuse of process of the Court. Hence, the impugned proceeding is liable to be quashed.
13. That it is submitted that if the case record is taken into consideration entirely, the facts stated therein disclose no offence at all against the accused-petitioners. Hence, the impugned proceeding is liable to be quashed.

14. That it is submitted that the continuation of the present case in the learned Court below is *ex-facie illegal*, *malafide* and sheer abuse of process of the Court. Hence, impugned proceedings may kindly be quashed.
15. That being aggrieved by and dissatisfied with the proceedings of the impugned case, the accused-petitioners beg to move this application for quashing the proceedings on the following amongst other—

GROUND S

- I. For that the complainant-informant has filed the case against the accused-petitioners only for the purpose of harassing and humiliating them since they have claimed their legal rights of purchasing of possession of the shops in the Ismail Mansion Super Market. The investigating officers who investigated into the case in field found no evidence in support of the prosecution case on two occasions; and consequently, they filed final reports consecutively; but the learned Metropolitan Magistrate, Dhaka without visiting the place of occurrence and also without considering the facts and circumstances, relied upon the judicial inquiry witnesses who were examined in the Court and filed inquiry report stating that he found primaface case against the accused-petitioners. Such kind of inquiry cannot override the earlier investigation reports; and consequently, the impugned proceeding is liable to be quashed.
- II. For that during the course of hearing on charge matters, the accused-petitioners raised the detail facts before the learned trial Court by filing discharge application. But unfortunately, the learned trial Court neither considered the grounds taken by the accused-petitioners in the discharge application nor perused the statements recorded by the investigating officers and framed charge against the accused-petitioners without applying judicial mind. Hence, the impugned proceeding is liable to be quashed.
- III. For that since there are civil litigation pending between the parties, the criminal proceeding should not be allowed to proceed before disposal of the civil litigations; and such kind of preposterous criminal case is clear abuse of process of the Court. Hence, the impugned proceeding is liable to be quashed.
- IV. For that if the case record is taken into consideration entirely, the facts stated therein disclose no offence at all against the accused-petitioners. Hence, the impugned proceeding is liable to be quashed.
- V. For that the continuation of the present case in the learned Court below is *ex-facie illegal*, *malafide* and sheer abuse of process of the Court. Hence, impugned proceedings may kindly be quashed.

WHEREFORE it is most humbly prayed that your Lordships would graciously be pleased to issue Rule calling upon the opposite party to show cause as to why the proceedings of Metro. Sessions Case No. 4195 of 2016 arising out of Newmarket Police Station Case No. 07 dated 07.10.2013 under Sections 348/385/506/34 of the Penal Code, 1860 now pending in the Court of learned Joint Metropolitan Sessions Judge, 4th Court,

Dhaka, shall not be quashed, call for the records and cause shown if any, after hearing the parties, make the Rule absolute and or pass such other or further order or orders as your Lordships may deem fit and proper.

AND

Pending hearing of the Rule, proceeding of the aforesaid case may kindly be stayed.

And for this act of kindness the accused-petitioners as in duty bound shall ever pray.

A F F I D A V I T

I, Mohammad Motiur Rahman, Son of late Abdul Mannan and Jahurunnessa of House No. 18/D, Sukanya Tower, 35, Mirpur Road, Dhanmond, Newmarket-1205, Dhaka **And** 45, Mirpur Road, Haider Garden, Flat-5A, Police Station- Mirpur, Dhaka; Office address: Shop No. 3/21 (2nd Floor), 7/43 (Godown), Dhaka, aged about-57, by faith Muslim, by profession- Business, by Nationality-Bangladeshi, National ID No. 505 914 1506 do hereby solemnly affirm and say as follows:

1. That I am the accused-petitioner No.1 and tadbirkar of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That all certified copies annexed with the application are genuine and true.
3. That the statements of facts made hereinabove are true to the best of my knowledge and the rests are submissions before the Hon'ble Court.

Prepared in my office.

(.....)

Advocate

Solemnly affirmed before me in the premises of Supreme Court Bar Association this ... th day of December, 2017.

DEPONENT

The deponent is known to me and identified by me.

(.....)

Advocate

Membership No.

Hall Room No. 2, Supreme Court Bar Association, Shahbagh, Dhaka.

Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

CHAPTER 15

Condonation of Delay

Period of limitation (in respect of filing suit) is provided under the Limitation Act, 1908. In addition, some other laws provide limitation period. However, parties may fail to file suit/appeal/revision/review/application within the time as prescribed by law. In case of failure to file in time, some statutes also give scope to file delay condonation application. If the Court satisfies and if the legal requirements fulfill, the delay can be condoned for filing such suit/appeal/ revision/ review/ application. For example : Section 5¹ of the Limitation Act, 1908, Section 160(6)² of the Income Tax Ordinance, 1984 and some other laws provide provisions for condonation of delay. Limitation Act applies to all general laws unless specifically excluded by any statute. Likewise, it does not apply to special legislations unless specifically included or given operation into by any statute. Some statutes may not provide any provision for condonation of delay. When there is no such provision, and where the Limitation Act does not apply, the party cannot file delay condonation application. Filing suit/petition within time is highly important because due to unexplained, unnecessary and unreasonable delay, a good case may face dismissal on its face. The application for condonation of delay should be drafted carefully explaining sufficient reasons for delay. Delay should not be intentional. Sufficient reasons should be explained enough so that the reasons can satisfy the Court to condone the delay. Delay should not be intentional, and the party must seek unconditional apology for causing delay. In the application, the number of days delay must be mentioned clearly. The party should not sleep over his/her right because delay defeats equity.

1. Section 5 provides that “any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation - The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court Division in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.”

2. Section 160(6) states that “Section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to an application under sub-section (1).”

Sample

DISTRICT: SHERPUR

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)**

CRIMINAL APPEAL NO. _____ OF 2019

IN THE MATTER OF

An application under section 5 of the Limitation Act, 1908 for condonation of 30 days delay in filing the appeal.

AND

IN THE MATTER OF

Md. Billal Hossain, son of Md. Jomshed Ali, of Village-Kalakanda, Upazila/Thana- Sribordi, District- Sherpur.

.... **Convict-Appellant-Petitioner**
(In Jail)

Versus

The State

.....**Respondent-Opposite Party.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H:

1. That the appellant filed this appeal challenging the judgment and Order dated 16.09.2018 passed by the Learned Joint Sessions Judge, 1st Court, Sherpur in Sessions Case No. 97 of 2017 corresponding to G. R. Case No. 525 of 2016 arising out of Sherpur Police Station Case No. 14 dated 5.10.2016 convicting the appellant under section 19(1) table 1(Ka) of the Madok Drabba Niyontron Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 7 (seven) years and to pay fine of Tk. 20,000/- (taka twenty two thousand) only, in default to suffer 6 (six) months simple imprisonment more.

2. That the convict-appellant-petitioner was arrested on 05.10.2016 and enlarged on bail on 15.12.2016 and he was present on the required dates before the learned Tribunal; but subsequently, he was declared absconder at the time of passing the judgment and order on 16.09.2018. He could not able to stand before the learned Tribunal at the time of passing the said judgment because he was not duly informed by his learned Advocate, and he was ill. It is pertinent to mention that during the significant portion of trial he was on bail but never misused the privilege of bail. After knowing the impugned judgment and order he voluntarily surrendered before the learned court below and prayed for bail, but the same was rejected vide order No. 23 dated 23.07.2019.
3. That the judgment was passed on 16.09.2018, and the appellant-petitioner came to know about the said judgment on 20.07.2018; thereafter he voluntarily surrendered before the learned trial court on 23.07.2019, and on the same day he was sent to jail, and he applied for certified copy on the same day and he obtained the same on 28.08.2019, and then he moved before the learned Advocate who eventually caused delay for further 20 (Twenty) days in filling this appeal.
4. That it is submitted that the delay in filing the aforesaid appeal is unintentional. Because the convict appellant-petitioner did not know about the impugned judgment and order dated 16.09.2018 passed by the trial court below; and it is also stated that due to his severe illness and also for the non-cooperation of the learned Advocate at the Court below of the petitioner, the appellant-petitioner could not take proper care of the update of this case; which is inadvertent and bonafide. After coming into knowledge about the impugned judgment and order, the appellant-petitioner voluntarily surrendered before the learned Court below. Hence, the delay in filing of the aforesaid appeal may kindly be condoned.
5. That it is submitted that the convict appellant-petitioner is law abiding poor citizen of Bangladesh. He has utmost respect to the judicial process of the country. For that reason, he has voluntarily surrendered before the learned Court below for facing the proceeding in lawful manner. Hence, the delay in filing the appeal may kindly be condoned.
6. That unless the delay is condoned for ends of justice the defendant-petitioners shall suffer irreparable loss and injury.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue Rule calling upon the respondent-opposite party to show cause as to why the delay of 30 days in filing the appeal should not be condoned and after hearing the parties and perusing the cause shown, if any, make the Rule absolute and/or pass such other or further order or orders as to your Lordships may seem fit and proper for ends of justice.

And for this act of kindness, your humble petitioner as in duty bound, shall ever pray.

A F F I D A V I T

I, MST. Mrium Bagum, wife of Md. Billal Hossain and mother's name MST Rahima Begum, of Village- Kalakanda, Upazilla/Thana- Sribordi, District- Sherpur, aged about 41, by faith Muslim, by profession- Housewife, by Nationality- Bangladeshi, National ID No. 8929008073063 do hereby solemnly affirm and say as follows:

01. That I am the *tadbirkar* of this case being the wife of accused-appellant-petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample**DISTRICT: COMILLA.****IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)****MEMORANDUM OF APPEAL FROM THE DECREE****FIRST APPEAL NO. 273 OF 2001
FIRST APPEAL TENDER NO. 308 OF 2001.****IN THE MATTER OF :**

An application under section 5 of the Limitation Act 1908 for condonation of delay of 937 days in filing the re-admission application of a First Appeal.

AND**IN THE MATTER OF:**

Sonali Bank Limited, Comilla Corporate Branch,
Monoharpur, P.S.- Kotwali, District- Comilla.

---- **Plaintiff- Appellant.**

–VERSUS –

1. M/s. Saimoon Steel and Manufacturers, Prop. Qazi Rezaul Karim, residing at Monoharpur (Minsifbari), P.S. Kotwali, Post. Comilla, District- Comilla.
2. Qazi Rezaul Karim (Prop. M/s. Saimoon Steel and Manufactures), son of Qazi Shafiuddin Ahmed, residing at Monoharpur, Post- Comilla, P.S. Kotwali, District- Comilla.
3. Qazi Ramizuddin Ahmed, son of Qazi Shafiuddin Ahmed, residing at North Charthe, Posst- Comilla, P.S. Kotwali, District- Comilla.

..... **Defendants-Respondents.**

AND**IN THE MATTER OF:**

Sonali Bank Limited, Comilla Corporate Branch,
Monoharpur, P.S.- Kotwali, District- Comilla.

---- **Plaintiff- Appellant-Applicant.**

–VERSUS –

1. M/s. Saimoon Steel and Manufacturers, Prop. Qazi Rezaul Karim, residing at Monohorpur (Minsifbari), P.S. Kotwali, Post. Comilla, District-Comilla.
2. Qazi Rezaul Karim (Prop. M/s. Saimoon Steel and Manufactures), son of Qazi Shafiuddin Ahmed, residing at Monohorpur, Post- Comilla, P.S. Kotwali, District- Comilla.
3. Qazi Ramizuddin Ahmed, son of Qazi Shafiuddin Ahmed, residing at North Charthe, Posst- Comilla, P.S. Kotwali, District- Comilla.

.....**Defendants-Respondents-**

Opposite Parties.

To,

Mr. Justice Syed Mahmud Hossain, the Hon’ble Chief Justice of Bangladesh and his Lordships’ companion Hon’ble Justices of the said Hon’ble Court.

The humble petition on behalf of the applicant most respectfully—

S H E W E T H :

1. That this is an application for condonation of delay in filing an application for re-admission of the First Appeal in its original number and file being First Appeal No. 273 of 2001 which was dismissed for default vide order dated 27.03.2018 from a Division Bench of this Hon’ble Court comprising of their Lordships Mr. Justice Mamnoon Rahman and Mr. Justice Ashish Ranjan Das.
2. That in the official calculation, 537 days delay has been found in filing the application for readmission of the First Appeal and the said delay is not deliberate but due to inadvertence and if the same is not condoned, the appellant-applicant shall suffer irreparable loss and injury.
3. That the above noted Appeal was filed by the plaintiff-appellant-applicant being aggrieved in part by the preliminary judgment and decree dated 28.01.2001 and 1.02.2001 passed by Begum Fatema Najeeb, Subordinate Judge, Artha Rin Adalat, Comilla in Title Suit (Artha Rin) No. 12 of 1995.
4. That the plaintiff-appellant appointed Mr. Abdul Azim as their learned Advocate for filing and conducting the said First Appeal, but he died on 20.02.2018, about which the plaintiff-appellant bank had no information. He was the only signing lawyer in the wokalatnama in the appeal, and none of his juniors/associates/clerks is connected with appellant bank. The plaintiff-appellant bank had no idea that the learned Advocate had died. However, in the late August of 2019 the appellant bank came to know that this appeal was dismissed for default as no one appears to press the appeal vide order dated 27.03.2018 by a Division

Bench of this Hon'ble Court comprising of their Lordships Mr. Justice Mamnoon Rahman and Mr. Justice Ashish Ranjan Das.

5. That after coming into knowledge of the said dismissal order, the plaintiff-appellant bank took immediate steps and tried to communicate with any junior/associate/clerk of late learned Advocate Mr. Abdul Azim but did not find any. Thereafter, the plaintiff-appellant bank appointed the present lawyer as their learned Advocate by appointment letter dated 2.09.2019, applied for the certified copy of the Order on 4.09.2019 and obtained certified copy of the Order on 5.09.2019, and thereafter filed this application for readmission. It is pertinent to mention that the appellant-applicant-petitioner did not receive any order for such dismissal within time, for that reason it could not take any appropriate step for readmission in time. Meanwhile, delay is also caused in filing this readmission application, for which the appellant is no way responsible of its own.
6. That this appeal came in the daily cause list on 11.06.2012 before this Hon'ble Court and thereafter on 7.03.2018, 8.03.2018, 14.03.2018, 15.03.2018 and lastly on 27.03.2018 when the appeal was dismissed for default without any order as to cost on the ground that no one appears to press the appeal.
7. That it is stated and submitted that the reason for dismissal of the appeal on the ground of non-appearance on behalf of the appellant for pressing the appeal is absolutely unintentional, beyond any control of any human being and the same is purely an Act of God. The plaintiff-appellant bank had no knowledge about the departure of their learned Advocate. However, the plaintiff-appellant begs unconditional apology before this Hon'ble Court.
8. That it is submitted that the delay in filing this application was not at all intentional on the part of the petitioner-applicant. It is a victim of circumstances and negligent service. For the unintentional delay in filing this application, the innocent petitioner should not let suffer. Hence the period of delay may kindly be condoned for ends of justice.
9. That it is submitted that serious interest of plaintiff-appellant bank is involved in this case and the plaintiff is entitled to get an opportunity of hearing the appeal before this Hon'ble Court, otherwise the plaintiff-appellant shall suffer irreparable loss and injury which may not be compensated in terms of money. As such, delay may kindly be condoned in readmission of this appeal for ends of justice.
10. That it is submitted that considering the balance of convenience and inconvenience, the greater is suffering by the plaintiff-appellant due to the dismissal of appeal on default; as such, delay may kindly be condoned in readmission of this appeal for ends of justice.
11. That it is submitted that the appellant-petitioner has got very good arguable case and grounds for getting success in the application by this Hon'ble Court and if the period of delay in filing the First Appeal is not condoned, the appellant-petitioner will be highly prejudiced. Therefore, the delay of 537 days may kindly be condoned by the Hon'ble Court for ends of justice.

Wherefore, it is most humbly prayed that this Hon'ble Court would graciously be pleased to issue a Rule calling upon the defendants-respondents-opposite parties to show cause as to why delay of 537 days in filing this

application for readmission of the First Appeal in its original number and file being First Appeal No. 273 of 2001 which was dismissed for default vide order dated 27.03.2018 from a Division Bench of this Hon'ble Court comprising of their Lordships Mr. Justice Mamnoon Rahman and Mr. Justice Ashish Ranjan Das should not be condoned and upon perusal of the cause, if shown, make the Rule absolute and pass such other or further order or orders as to his Court may seem fit and proper.

And for this act of kindness, your petitioner, as in duty bound, shall ever pray.

AFFIDAVIT

I, Md. Nasir Uddin, son of Md. Abdul Karim and Mojida Begum, of House- Ali Maddin Master Bari, Village- Jangalia, Boro Moheshpur, Post Office- Moheshpur-3512, Borura, Cumilla, aged about 38 years, by faith Muslim, by profession- service, by Nationality-Bangladeshi being National ID No. 1910969159497 do hereby solemnly affirm and say as follows:—

1. That I am the tadbirkarak/authorized person being the Senior Office of the plaintiff-appellant in this case and as such I am acquainted with the facts and circumstances of this case and competent to swear this Affidavit.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)

Advocate

Solemnly affirmed before me in the Supreme Court Premises on this ... th day of September, 2019.

DEPONENT

The deponent is known to me and identified by me

(Shahadat Hossain)

Advocate

Membership No. 6731
Hall Room No.2, Supreme
Court Bar Association,
Shahbagh, Dhaka.
Mobile: 01717041929

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL STATUTORY JURISDICTION)**

INCOME TAX REFERENCE
APPLICATION NO. _____ OF 2019

IN THE MATTER OF:

An application under Section 160(6) of the Income Tax Ordinance, 1984 read with Section 5 of the Limitation Act, 1908 for condonation of delay of 25 days.

A N D**IN THE MATTER OF:**

Scholastica Ltd, of House No. 3/D, Road No. 2/B Block-1, Baridhara, Dhaka-1212, represented by its Managing Director.

..... **Applicant-Petitioner.**

-Versus -

The Deputy Commissioner of Taxes, Circle-227 (Companies), Taxes Zone -11, Dhaka.

..... **Respondent-Opposite Party.**

To

Mr. Justice Syed Mahmud Hossain, the Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition of the petitioner above-named most respectfully—

S H E W E T H :

1. That the applicant is a company established under the Companies Act, 1994 having its registered officer at the cause title. Based in Dhaka City, the applicant is providing quality English medium education to the students.
2. That it is stated that the Tribunal passed the impugned order on 17.07.2018 and the said order was delivered to the learned Advocate of the applicant on 13.11.2018 and was entrusted for filling income tax reference and taking proper action against the impugned

order passed by the Tribunal. On repeated requests of the applicant-petitioner, he assured verbally that he took appropriate action and also filed reference application in time; but on 18.06.2019 the applicant came to know that the income tax reference against the said order of the Tribunal was not filed though the certified copy of the order was delivered and taken on 13.11.2018. However, after coming into knowledge about the aforesaid default, the applicant -petitioner without making any further delay took proper steps by filing requisition for obtaining certified copies of all necessary orders and papers on 20.06.2019, and thereafter got certified copies on 25.06.2019. Subsequently, further delay was caused due to the two holidays intervening in between the receipt of the certified copies and the filing of this application. The applicant should have filed this application within 90 (ninety) days of the receipt of the order of the Tribunal. Since the applicant received the order on 13.11.2018, the period of 90 (ninety) days expired on 13.02.2019. As the application is being filed on 21.08.2019, there has been a delay of 25 days in filing this application.

3. That it is submitted that the delay in filing the application on 21.08.2019 is not intentional. The applicant-petitioner is not at all in fault intentionally. For the unintentional delay and also for the lapses committed by earlier authorised persons, the petitioner should not let suffer. Hence, the delay in filing the appeal may kindly be condoned.
4. That the applicant-petitioner seeks unconditional apology for the aforesaid delay. If the delay is not condoned, the petitioner shall suffer irreparable loss and injury because the petitioner has a good case in hand involved in this reference application which needs to be adjudicated by this Hon'ble Court for ends of justice.

WHEREFORE, it is most humbly prayed that Your Lordships may graciously be pleased to issue a Rule calling upon the respondent to show cause as to why the delay of 25 days shall not be condoned and after hearing the parties and perusing the cause shown, if any, make the Rule absolute, and pending hearing of the Rule the aforesaid delay of 25 days in filing this Reference Application may kindly be condoned for ends of justice and/or pass such other or further order or orders as to your Lordships may seem fit and proper for ends of justice.

And for this act kindness, the applicant as in duty bound shall ever pray.

AFFIDAVIT

I, Md. Musharof Hussain, Manager, Finance, Scholastica Ltd, son of Abdul Aziz and Nasima Aziz of Village-Bamonmoha, Post Office-Chollisha, Police Station-Netrokona Sadar, District-Netrokona by profession- Job, aged about- 34 years, by faith Muslim, by nationality Bangladeshi, National ID No. 7217415277065 do hereby solemnly affirm and say as follows :—

01. That I am employee of the applicant in this case and well-conversant with the facts of this case and competent to swear the Affidavit.
02. That the statements of facts made in this application are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2019
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT: RANGPUR.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

CIVIL RULE (CON) NO.OF 2019

CIVIL REVISION NO. OF 2019.

IN THE MATTER OF :

An application under section 5 of the Limitation Act
1908 for condonation of delay of 177 days in filing Civil
Revision.

AND

IN THE MATTER OF:

Md. Azahar Ali, son of Md. Karamatulla, of Kangur Para, Police Station- Pirgonj, District- Rangpur.

--- Plaintiff-Petitioner.

-Versus-

1. Md. Nurul Islam, son of Md. Karamatulla, of Osmanpur.
2. Md. Monowar Hossain, son of Md. Antaj Ali, of Osmanpur,

Both Police Station- Pirgonj, District- Rangpur.

--- Defendants-Opposite Party.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Lordships' companion Hon'ble Justices of the said Hon'ble Court.

The humble petition on behalf of the above-named petitioner most respectfully—

S H E W E T H :

1. That this is an application for condonation of delay which has been filed for an application under Section 115(1) of the Code of Civil Procedure, 1908 against the Judgment and order dated 7.08.2017, decree signed on 13.08.2017 passed by the Joint District Judge, Court No. 2, Rangpur in Other Appeal No. 149 of 2007 disallowing the appeal and thereby affirming the judgment and decree dated 31.07.2007, decree signed on 7.08.2007 passed by the Senior Assistant Judge Court No. 3, Rangpur in Other Class Suit No. 58 of 2003 dismissing the suit.
2. That in the official calculation, 177 days delay has been found in filing the Civil Revision and the said delay is not deliberate but due to inadvertence and if the same is not condoned, the petitioner-applicant shall suffer irreparable loss and injury.
3. That the judgment and decree in appeal was passed on 7.08.2017, decree signed on 13.08.2017. But learned Advocate for the petitioner did not inform the petitioner about the said judgment and decree and its result. Even he did not submit necessary requisite for obtaining the certified copy of the judgment so that the petitioner can file revision in time without causing delay. The learned Advocate did not perform his duty properly. Subsequently, when the petitioner in December 2018 communicated with the learned Advocate, only that time the petitioner came to know about the said judgment and decree.

The petitioner requested his learned Advocate to collect the certified copies of necessary documents for filing appeal but at the first instant he only gave the certified copy of the judgment of the appeal court to the petitioner without giving the copy of decree and the certified copy of the judgment and decree of trial court. The petitioner only with the certified copy of the judgment of appeal court came to this learned Advocate of the High Court Division who informed him that without the certified copies of the decree of appeal court and the judgment and decree of trial court its not possible to file revision. Listening to this the petitioner communicated with his learned Advocate of sub-ordinate court and again requested him to give the documents as sought by the learned Advocate of the High Court Division. Thereafter, doing unusual dilly-dally practice, the learned Advocate gave the certified copies of plaint, written statements, judgment and decree in June, 2019. After getting those documents, the petitioner communicated with his earlier lawyer of High Court Division and file this civil revision. All this issues caused unintentional delay in filing this civil revision.

4. That it is submitted that the delay in filing the instant Civil Revision was not at all intentional on the part of the petitioner-applicant. He is a victim of circumstances and negligent service. For the unintentional delay in filing this revision, the innocent petitioner should not let suffer. Hence the period of delay may kindly be condoned for ends of justice.
5. That it is submitted that the petitioner has got very good arguable case and grounds for getting success in the Civil Revision by this Hon'ble Court and if the period of delay in filing the Civil Revision is not condoned, the petitioner will be highly prejudiced. Therefore, the delay of 177 days may kindly be condoned by the Hon'ble Court for ends of justice.

Wherefore, it is most humbly prayed that this Hon'ble Court would graciously be pleased to issue a Rule calling upon the respondents to show cause as to why delay of 177 days in filing Civil Revision Judgment and order dated 7.08.2017, decree signed on 13.08.2017 passed by the Joint District Judge, Court No. 2, Rangpur in Other Appeal No. 149 of 2007 disallowing the appeal and thereby affirming the judgment and decree dated 31.07.2007, decree signed on 7.08.2007 passed by the Senior Assistant Judge Court No. 3, Rangpur in Other Class Suit No. 58 of 2003 dismissing the suit should not be condoned and upon perusal of the cause, if shown, make the Rule absolute and pass such other or further order or orders as to his Court may seem fit and proper.

And for this act of kindness, your petitioner, as in duty bound, shall ever pray.

AFFIDAVIT

I, Md. Azahar Ali, son of late Karmatulla and late Nur Jahan Begum of Village- Chatra, Post Office- Chatra Kachari-5470, Pirgonj, Rangpur, age about- 66 years, by faith Muslim, by profession- Service, by Nationality-Bangladeshi, National ID No. 8517641613435 do hereby solemnly affirm and say as follows:

01. That I am the petitioner of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT: BARISHAL

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)
CRIMINAL REVISION NO. _____ OF 2021**

IN THE MATTER OF

An application under section 5 of the Limitation Act, 1908 for condonation of _____ days delay in filing the appeal.

AND**IN THE MATTER OF**

Ahsan Uzzaman Khan, son of late Asaduzzaman Khan, of Khan Monjil, Amantgonj Kaunia Thanar poschim pashe, Thana – Kaunia, District – Barishal. Business address : Messers Khan Traders, Proprietor - Ahsan Uzzaman Khan, of – Port Road, Hatkhola, Thana – Kaunia, District - Barishal.

--- **Convict–Appellant–Petitioner.**

(In Jail).

-Versus-

1. The State
2. Pubali Bank Limited, Barishal Area, Md Kaiyum Dhali, authorized person for Barishal (CLS) and on behalf of Messers Talukder Enterprise, son of Abdul Rob Dhali, Manager, Messers Talukder Enterprise, Barishal Area, Barishal.

--- **Opposite Parties.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :

1. That this application has filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 against the judgment and order dated 16.06.2019 passed by the learned Additional Session Judge, 1st Court, Barishal in Criminal Appeal No. 125 of 2018 disallowing the appeal and thereby affirming the judgment and order of conviction and sentence dated 11.10.2017 passed by the learned Joint Session Judge, Court No. 4, Barishal in Session Case No. 736 of 2015 arising out of C.R. Case No. 283 of 2015 (Kaunia) under section 138 of the Negotiable Instrument Act, 1881, sentencing the petitioner to suffer simple imprisonment for a period of 3 (three) months along with fine Tk. 1,41,121/- (One Lac Forty One Thousand One Hundred and Twenty One) only.
2. That the learned trial court below pronounced its judgment and order on 16.06.2019 convicting the appellant under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 3 (three) months and to pay fine of Tk. 1,41,121/- only.

3. That after the judgment of the trial court, the convicted-petitioner voluntarily surrendered before the learned trial court below duly paying the statutory deposit amount equivalent to 50% of the amount of dishonoured cheque for filing appeal under section 138A of the Negotiable Instrument Act, 1881 in the High Court Form No. (A) 1, A (Challan) and prayer for bail on the ground of filing appeal and after hearing the same the learned trial court was pleased to enlarge the convicted petitioner on bail.
3. That the convict appellant petitioner filed appeal before the concerned court below. The learned Appellate Court after hearing the parties and perusing the documents, disallowed the appeal and affirmed the judgment and order of sentence and conviction passed by the learned trial court below.
4. That it is stated that the convict appellant petitioner was absent during trial stage and the trial was held in his absence. Subsequently he filed appeal but he could not face the entire appeal and he was absent on the date of passing the impugned judgment.
5. That it is stated that the petitioner is not at any intentional default for being absent at the time of trial as well as appeal. Under compelling circumstances, he could not appear before the Court. His mother was suffering from cancer and ultimately she died. He was very close to his mother. His departure from his mother brought him tremendous depression. He ruined up entirely. He lost his shop and became indebted to many. All these things prevented him from communicating with his lawyer and do the needful. Thereafter, the corona outbreak added more difficulty to his life. Now, he is under total loss from all perspectives. He is begging unconditional apology for it. He was arrested by the Police and now he is in jail.
6. That it is submitted that the appellant-petitioner is innocent. He had no knowledge about the appellate court Judgment and hence caused delay in filing this revision which is bonafide and unintentional. The petitioner begs unconditional apology for it. If the delay is not condoned the petitioner shall suffer irreparable loss and injury which may not be compensated in terms of money.
7. That it is submitted that the convict petitioner is law abiding poor citizen of Bangladesh. He has utmost respect to the judicial process of the country. Hence, the delay in filing the revision may kindly be condoned.
8. That unless the delay is condoned for ends of justice the convict-petitioner shall suffer irreparable loss and injury.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to issue Rule calling upon the respondent-opposite party to show cause as to why the delay of _____ days in filing the revision against the impugned judgment and order dated 16.06.2019 passed by the learned Additional Session Judge, 1st Court, Barishal in Criminal Appeal No. 125 of 2018 disallowing the appeal and thereby affirming the judgment and order of conviction and sentence dated 11.10.2017 passed by the learned Joint Session Judge, Court No. 4, Barishal in Session Case No. 736 of 2015 arising out of C.R. Case No. 283 of

2015 (Kaunia) under section 138 of the Negotiable Instrument Act, 1881, sentencing the petitioner to suffer simple imprisonment for a period of 3 (three) months along with fine Tk. 1,41,121/- (One Lac Forty One Thousand One Hundred and Twenty One) only should not be condoned and after hearing the parties and perusing the cause shown, if any, make the Rule absolute and/or pass such other or further order or orders as to your Lordships may seem fit and proper for ends of justice.

And for this act of kindness, your humble petitioner as in duty bound, shall ever pray.

AFFIDAVIT

I, Mahabub Hsan, son of Motiur Rahman and Hosnera Begum, of Village- BCC-385, Sayestabad Sarak, Post Office- Barishal Sadar, Police Station- Barishal Sadar, Barishal, aged about- 31 years, date of birth: 15.10.1991, by faith Muslim, by profession- Businessman, by Nationality- Bangladeshi, National ID No. 1923014771 do hereby solemnly affirm and say as follows:

01. That I am the cousin of the convict-petitioner and tadbirkar of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Syeda Nasrin)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Syeda Nasrin)
Advocate
Membership # 6731
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION
(CIVIL APPELLATE JURISDICTION)**

CIVIL PETITION FOR LEAVE TO APPEAL NO. _____ OF 2021

(Arising out of Writ Petition No. 2904 of 2021)

IN THE MATTER OF

An application for condonation of delay.

AND

IN THE MATTER OF

Bangladesh-China Power Company (Pvt.) Limited.

..... **Petitioner.**

(Respondent No. 5 in Writ Petition)

-Versus-

Sheikh Moniruzzaman, Proprietor, Payra Shipping and Logistics.

----- **Respondent.**

(Petitioner in Writ Petition)

AND

IN THE MATTER OF

Bangladesh-China Power Company (Pvt.) Limited,
represented by the Managing Director, of 8, Panthapath,
Kawran Bazar, Level-5, UTV Building, Dhaka-1215.

..... **Petitioner-Applicant.**

(Respondent No. 5 in Writ Petition)

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his Hon'ble companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H

1. That this application for condonation of delay is filed in the instant Civil Petition for Leave to Appeal directed against the ad-interim Order of Stay dated 9.03.2021 passed by the High Court Division in Writ Petition No. 2904 of 2021.
2. That the High Court Division passed the impugned order on 9.03.2021. After coming into knowledge of the same, the petitioner duly requested his learned Advocate to apply for the certified copy of the judgment so that the petitioner can file appeal in time. But subsequently it was found that the learned Advocate did neither apply for the certified copy nor inform the petitioner. Thereafter second wave of Covid-19 out broke across the country which put the entire country under lockdown for a couple of months. Meanwhile the Hon'ble Court started its functioning virtually. After coming into knowledge about the Court function, the petitioner again communicated with the learned Advocate who informed that the certified copy had not been collected by him due to lockdown. It left the petitioner with sadness. After finding that truth the petitioner changed his lawyer and appointed the new lawyer for filling appeal. The learned Advocate was appointed on 10.06.2021. Immediately after receiving the same, he applied for the certified copy on 13.06.2021 and obtained the same. And he also collected all the necessary papers of the Writ Petition from the concerned Section and drafted the leave petition, stay petition and this application for condonation of delay as soon as possible; but by this time few days delay were caused in filing this leave petition, which is absolutely unintentional, *bonafide* and beyond the control and knowledge of the petitioner.
3. That it is submitted that the delay caused in filing the leave petition is purely *bonafide* and unintentional. The petitioner has no fault of his own. He is innocent and he is not responsible for the delay. For the unintentional and *bonafide* mistake of the learned Advocate, the innocent petitioner should not let suffer. As such, the delay caused in filing this leave petition may kindly be condoned for ends of justice.
4. That it is submitted that the aforesaid delay is unintentional and beyond the control of the petitioner as such the petitioner craves mercy to condone the delay in filing this leave petition; otherwise, the petitioner shall suffer irreparable loss and injury which will give birth to great injustice since a good arguable case and points of law are involved in this case. As such, the delay may kindly be condoned for ends of justice.

WHEREFORE, it is most humbly prayed that this Hon'ble Court would graciously be pleased to condone the delay of _____ days in filing the aforesaid Civil Petition for Leave to Appeal and /or pass such other or further order or orders as to this Hon'ble Court may deem fit and proper.

And for this act of kindness the petitioners as in duty bound shall ever pray.

Drawn and filed by:

Advocate-on-record
For the Petitioner.

CHAPTER 16

Contempt Petition

Appellate Division¹ or High Court Division can initiate contempt proceeding either on its own motion or on an application brought before the Court. Article 108 of the Constitution provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself.² For any intentional violation, disobedience or willful non-implementation of the Court's order, judgment, decree, direction, proceeding or the function of Courts, the aggrieved party may draw contempt proceeding upon serving notice to the the contemnor(s).³ The governing law was the Contempt of Courts Act, 1926 which was repealed by the Contempt of Court Act, 2013. It was challenged on the ground of constitutionality. High Court Division declared it unconstitutional. After that, the filing lawyer Advocate Manzil Morshed told bdnews24.com that "after this rule, the Contempt of Court Act, 1926 will be effective for lower courts. Section 108 of the Constitution will be applicable for Supreme Court."⁴ Unless it is specially stated in the judgment about the revival of the earlier Act, the earlier Act does not revive automatically by dint of Section 6(a) of the General Clauses Act 1897. However, the case is on appeal, thus pending before the Appellate Division. It is not time to wait for the verdict of the Appellate Division.

In fact, the Court possesses the inherent jurisdiction to punish one who interferes, in any way, with the proper functioning of the court system and undermines or lower downs the dignity of the Court. Court has the power and ability to maintain its own honor and prestige, otherwise Court's order/proceeding may face depression or degradation. However, in applying the law of contempt of court a balance should be made between the freedom of expression and the need to maintain the authority of the court.⁵

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1. Part V Order XXVII Rule 1, The Supreme Court of Bangladesh (Appellate Division) Rules, 1988 provides that "The Court may take cognizance of its contempt suo motu or on a petition by any person: Provided that where the alleged contempt consists of willful disobedience of any Judgment, decree, direction, order, writ or other process of the Court or a breach of an undertaking given to the Court or a Judge in Chamber, the Court may take cognizance suo motu or on a petition by the aggrieved person".
 2. "The power of the Supreme Court to punish anyone for contempt of that Court is found in Article 108 of the Constitution. Reference has been made to the treatise "Constitution Law of Bangladesh" by Mahmudul Islam where the esteemed author, by reference to English decisions, identifies three broad categories of contempt namely (1) scandalisation of the court, (2) disobedience to the orders of the court and breach of undertakings given to the court and (3) interference with the due course of justice.
The contempt with which we are concerned in the instant case relates to scandalisation of the Court, which in essence means lowering the dignity of the Court or making comments calculated to undermine public confidence in the judges and the justice delivery system."
[Ekramul Haque Balbul and Ors. vs. Muhammad Faiz and others, 35 BLD 2015 AD 87.]
 3. Sample of notice is provided in the Chapter of Legal Notice. Some instructions are given in that Chapter regarding parties and other issues.
 4. 'HC rules contempt of court law illegal', *Bdnews24.com* (online)
<<https://bdnews24.com/bangladesh/2013/09/26/hc-rules-contempt-of-court-law-illegal>> (Accessed 12.05.2020).
 5. Moinul Hosein v Sheikh Hasian Wazed, 53 DLR 2001 HCD 138.

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

CONTEMPT PETITION NO. _____ OF 2017.
(Arising out of Writ Petition No. 14382 OF 2017)

IN THE MATTER OF:

An application for drawing up contempt of court proceeding.

AND**IN THE MATTER OF:**

Golum Sarwar Khokon, Son of Haji Golum Mawla, Proprietor GM Traders, Address: 6/6 Mowla Chamber, Agrabad C/A, Chittagong.

..... **Petitioner.**

-Versus-

1. Dr. A.K.M. Nauruzzaman, Commissioner of Customs, Customs House, Chittagong.
2. Kazi Deen Muhammad, Revenue Officer, Customs House, Chittagong.

..... **Contemnors.**

AND**IN THE MATTER OF:**

An application for drawing-up a contempt of court proceeding against the contemnors for violating order dated 17.10.2017 passed in Writ Petition No. 14382 of 2017 and failure to comply with the direction of the Hon'ble Court by the said judgment and order.

To

Mr. Justice Md. Abdul Wahhab Miah, performing the functions of the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the petitioner most respectfully—

S H E W E T H:

1. That this contempt petition has arisen due to non-compliance and violation by the contemnors of order dated 17.10.2017 passed by the Hon'ble High Court Division in Writ Petition No. 14382 of 2017.
2. That the petitioner owns a small type proprietary firm doing small kinds of business. He is a peace loving and law abiding permanent citizen of the People's Republic of Bangladesh.
3. That the contemnors are No. 1. Dr. A.K.M. Nauruzzaman, Commissioner of Customs, Customs House, Chittagong and contemnor No. 2.Kazi Deen Muhammad, Revenue Officer, Customs House, Chittagong.
4. That the addresses of the parties given in the cause title are correct for the purpose of serving notices/summons upon the parties.
5. That the petitioner imported PIKUP (HINO MOTOR LTD), CHASSIS No. FC3JCA-11942, year 1996/09 under the LC No. 0000196616010170, issued on 24.11.2016, Export Import Bank of Bangladesh, Sheikh Mujib Road Branch, Chittagong and Proforma Invoice No. SBC/PI001BAN/2016 dated 11.11.2016 (henceforth referred to as the "said PIKUP").
6. That the petitioner submitted Bill of Entry being No. C 699250 dated 29.05.2017 when the said PIKUP of the petitioner reached at port.
7. That the petitioner imported the said PIKUP for the purpose of carrying out business, but he could not release the car due to fund shortage. As a result, the car was sent for auction sale. Accordingly, auction notice was published under Tender Sale No. 05/2017 and catalogue was published on 19.07.2017.
8. That under the circumstances, the petitioner requested the respondents-contemnor No. 2 to give him further 3 (three) months time for releasing the goods by paying all the dues. Since the petitioner was facing financial difficulty, therefore the petitioner needed co-operation and hence, the petitioner requested the respondents-contemnors for not to sell the said imported PIKUP of the petitioner.
9. That now the petitioner wants to release the said PIKUP by paying all necessary duties and charges. If the said PIKUP would be sold otherwise by the Customs Authority, the petitioner shall suffer irreparable loss and injury, which will not be compensated in terms of money.
10. That under the circumstances, the petitioner filed the Writ Petition No. 14382 of 2017 challenging the impugned process of auction and also for direction to release the PIKUP before the Hon'ble Court Division. The Hon'ble Court after hearing the learned Advocate for the petitioner was pleased to issue Rule Nisi and grant ad-interim relief in the following manner—

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned auction sale of PICUP (HINO MOTOR LTD.), Model FC3JCA, Chassis No. 11942, as described under serial No. 171 of Tender Sale No. 05/2017, Catalogue publish on 19.07.2017, imported under L/C No.0000196616010170, issue date 24.11.2016, Export Import Bank of Bangladesh Ltd. (Sheikh Mujib Road Branch), Chittagong, issued by the

respondent no. 2-3, as evidenced by Annexure-C and Bill of Entry No. C-699250, dated 29.05.2017 under H.S. Code No. 87042116, shall not be declared to have been done without lawful authority and to be of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Pending hearing and disposal of the Rule, let further process of impugned auction, so far as it relates to aforesaid PIKUP of the petitioner, be stayed for a period of 6(six) months from date.

Pending hearing and disposal of the Rule, the respondents are directed to release the petitioner's PICKUP (HINO MOTOR LTD.), Model FC3JCA. Chassis No. 11942, as described under serial No. 171 of Tender Sale No. 05/2017, Catalogue publish on 19.07.2017, imported under L/C No. 0000196616010170, issue date 24.11.2016, Export Import Bank of Bangladesh Ltd. (Sheikh Mujib Road Branch), Chittagong, issued by the respondent no. 2-3, as evidenced by Annexure-C and Bill of Entry No. C-699250, dated 29.05.2017 under H.S. Code No. 87042116 in favor of the petitioner, within a period of 30(thirty) days from the date of receipt of the certified copy of the order passed today."

Photocopy of the order dated 17.10.2017 is annexed hereto and marked as **Annexure- "A"**.

11. That thereafter, the said Order of the Hon'ble Court was duly communicated to the respondents-contemnors but they did not comply with the same and has not released the goods in favor of the petitioner yet; against which customs charges and demurrages are increasing day by day.
12. That since the said PIKUP was imported by the petitioner by opening LC, against which forced loan has already been created and money was repaid to the foreign seller. As such, the petitioner has all prerogative rights and vested interests over the said car. But the respondents-contemnors are not releasing the said PIKUP in favor of the petitioner in derogation of the aforesaid Order of the Hon'ble Court.
13. That under the circumstances, already a long time has already been passed after the said order dated 17.10.2017 passed by the Hon'ble High Court Division in Writ Petition No. 14382 of 2017; but respondents-contemnors did comply with the directions as given by the Hon'ble High Court Division in the aforesaid writ petition, which is violative, degrading and contemptuous to the verdict of the Hon'ble High Court Division and also seriously prejudicial to the rights and interest of the petitioner. Due to the respondents-contemnors' non-compliance of the said order of the Hon'ble High Court Division, the petitioner is suffering serious loss and injury which may not be compensated in terms of money.
14. That under the circumstances the petitioner served a contempt notice on 26.12.2017 upon the respondents-contemnors giving 3 (three) days time to comply with the aforesaid order, but the same met with no result yet. Copies of the contempt notice and postal receipt are annexed hereto and marked as **Annexure- "B" & "B-1"**.
15. That it is stated that before the serving of the aforesaid contempt notice the petitioner also requested the respondents-contemnors a lot on several occasions in person and also by written representation for complying with the aforesaid order, but the respondents-contemnors very arrogantly and vehemently paid no heed thereto.

16. That it is submitted that the conduct of the Contemnors is nothing but showing utter disregard to the authority and dignity of the highest court of the country. They have intentionally undermined the honour, dignity and authority of this Hon'ble Court by not complying with the direction as given in the said judgment and order dated 17.10.2017; and as such contempt of court proceeding is required to be drawn-up against them for the ends of justice.
17. That finding no other way the petitioner is constrained to file this contempt petition before your Lordships for violating the order of this Hon'ble Court.
18. That the applicant craves kind leave of this Hon'ble Court to swear Affidavit to this Application with the photocopy of Annexure- A, original of which are lying with the office of the contemnors who will be bound to produce it before the Hon'ble Court on demand.

WHEREFORE, it is most humbly prayed that Your Lordships would graciously be pleased to:

- A) Issue a Rule Nisi calling upon the contemnors to show cause as to why a contempt of court proceeding shall not be drawn up against them for violation of the order dated 17.10.2017 passed by this Hon'ble Court in Writ Petition No. 14382 of 2017.
- B) Pending hearing of the Rule be further pleased to direct the contemnors to be present personally before this Hon'ble Court on the date or dates as may be fixed for hearing this petition.
- C) After hearing the parties, make the Rule absolute.
- D) Pass such other or further order or orders as to your Lordships may seem fit and proper.

And for this act kindness, the petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Golum Sarwar Khokon, son of Haji Golum Mawla and Shamsun Nahar Mawla, Proprietor of GM Traders, of 6/6 Mowla Chamber, Agrabad C/A, Chittagong, Permanent Address: House- Jahaj Building, 206, Village- Muhuri Para, Post Office- Bandar-4100, Halishahar, Chittagong City Corporation, Chittagong, Date of Birth- 20 October, 1974 years, occupation – Business, by faith- Muslim, by Nationality- Bangladeshi, National ID No. 9112947347 do hereby solemnly affirm and say as follows:—

01. That I am the petitioner of this petition and I am acquainted with the facts and circumstance of the case and as such I am competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Syeda Nasrin)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2018
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Zarif Kabir)
Advocate
Membership # 6731
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

CONTEMPT PETITION NO. OF 2017.

(Arising out of Writ Petition No. 1808 of 2014)

IN THE MATTER OF:

An application for drawing up contempt of court proceeding.

AND

IN THE MATTER OF:

Md. Robiul Haque, Son of late Abul Kalam Azad,
Address: Suresh Pande Road, Boalia, Rajshahi.

..... **Petitioner.**

-Versus-

1. Bangladesh Rural Development Board (BRDB), Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-1215, represented by its Director General Mohammad Abdul Qaiyum.
2. Mohammad Abdul Qaiyum, the Director General, Bangladesh Rural Development Board (BRDB), Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-1215.
3. Md. Abdul Hakim, Joint Director (Admin), Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-1215.

..... **Contemnors.**

AND**IN THE MATTER OF:**

An application for drawing-up a contempt of court proceeding against the contemnors for violating the judgment and order dated 10.05.2016 passed in Writ Petition No. 1808 of 2014 and failure to comply with the direction of the Hon'ble Court by the said judgment and order.

To

Mr. Justice Md. Abdul Wahhab Miah, performing the functions of the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the petitioner most respectfully—

S H E W E T H:

1. This contempt petition has arisen due to non-compliance and violation by the contemnors of the judgment and order dated 10.05.2016 passed by the Hon'ble High Court Division in Writ Petition No. 1808 of 2014.
2. That the petitioner is a law abiding permanent citizen of the People's Republic of Bangladesh. He has been serving in the development project of BRDB as "Data Entry Operator".
3. That the contemnor No. 1 is the Bangladesh Rural Development Board (BRDB), Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-1215, represented by its Director General Mohammad Abdul Qaiyum, the contemnor No. 2 is Mohammad Abdul Qaiyum, the Director General, Bangladesh Rural Development Board (BRDB), Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-1215 and the contemnor No. 3 is Md. Abdul Hakim, Joint Director (Admin), Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-1215.

4. That the addresses of the parties given in the cause title are correct for the purpose of serving notices/summons upon the parties.
5. That the petitioner was firstly appointed under the Development project of the Bangladesh Rural Development Board (shortly as BRDB) to the post namely “Data Entry Operator” vide Office Memo No. বাপাউবো/পদপত্র/ডাটা-এন্ট্রি/নিয়ো/প্রশা-৮৭/৯৪/১৫৫০ dated 05.12.1995.
6. That since his appointment, the petitioner has been serving in the BRDB with the satisfaction of all concerned particularly the Office of the BRDB and also at office of the contemnors. As a result, the service of the petitioner was transferred from one project to another. Lastly the petitioner was transferred to the project namely RLP of the BRDB vide Office Memo No. 7.62.000.911.072.2013.8380 dated 31.07.2013 and since then the petitioner has been serving in that project with full satisfaction of all concerned authorities.
7. That since the contemnors did not absorb the petitioner in the Revenue Budget from the development project, therefore the petitioner filed Writ Petition No. 1808 of 2014 in this Hon’ble Court praying for a direction upon the respondents to absorb and regularize his service as Data Entry Operator in the revenue budget from the development project and also for counting his seniority from the date of joining in the development project for fixing salary and other service benefits including the time scale and selection grade as per Rule 6 of the S.R.O. namely “উন্নয়ন প্রকল্প হইতে রাজস্ব বাজেটে স্থানান্তরিত পদের পদধারীদের নিয়মিতকরণ ও জ্যেষ্ঠতা নির্ধারণ বিধিমালা-২০০৫” and obtained Rule.
8. That after hearing, this Hon’ble Court was pleased to dispose of the Rule by judgment and order dated 10.05.2016 with a direction upon the respondents-contemnors a absorb/regularise the service of the petitioner as “Data Entry Operator” to the Revenue Budget of B.R.D.B and to count his seniority as per said Rule subject to vacancy arises and he is no otherwise disqualified. For ready reference the stare decisis of the judgment is quoted below—

“The respondents are directed to basorb/regularize the petitioner serving as Data Entry Operator of the Development Project namely RLP of the Bangladesh Rural Development Board (BRDB) to the Revenue Budget of the BRDB under the Government of the People’s Republic of Bangladesh and to count the seniority for the salary and other service benefits including time scale and selection grade of the petitioner from the date of his joining in the development project as per Rule 6 of SRO namely “উন্নয়ন প্রকল্প হইতে রাজস্ব বাজেটে স্থানান্তরিত পদের পদধারীদের নিয়মিতকরণ ও জ্যেষ্ঠতা নির্ধারণ বিধিমালা-২০০৫” contained in Memo SRO No. 182/Ain/2005/somo/Bidhi-I/S-9/2000 dated 20.06.2005 (Annexure- G) issued by the Office of the respondent No. 2 under the Order of the Hon’ble President of the Republic which they are permitted/required by law to do vacancy arises subject to the condition that they are otherwise not disqualified.

In view of the observations as made above the rule is disposed of without any order as to cost.”

Photocopy of the judgment and order dated 10.05.2016 is annexed hereto and marked as **Annexure- “A”**.

9. That it is stated that although the said judgment of this Hon’ble Court was duly communicated to the respondents-contemnors but they did not comply with this direction of this Hon’ble Court. Moreover, the contemnor No. 2 issued and published appointment

notice in the daily “Janakantha” on 13.02.2017 inviting application for the post of “Data Entry Operator”. Against which the petitioner filed Writ Petition No. 8668 of 2017. After hearing the parties and perusing the documents, the Hon’ble High Court Division was pleased to issue Rule Nisi and stay the said publication. By dint of that position, appointing the petitioner to the permanent post, but the contemnors are not regularising the petitioner with malafide intention for reasons best known to them, which is a flagrant violation of the said judgment and order of the Hon’ble Court.

10. That under the circumstances, already a long time has already been passed after the said judgment and order dated 10.05.2016 passed by the Hon’ble High Court Division in Writ Petition No. 1808 of 2014; but the contemnors are not complying with the directions as given by the Hon’ble High Court Division in the aforesaid writ petition, which is violative, degrading and contemptuous to the verdict of the Hon’ble High Court Division and also seriously prejudicial to the rights and interest of the petitioner. Due to the contemnors’ non-compliance of the said judgment and order of the Hon’ble High Court Division, the petitioner is suffering serious loss and injury which may not be compensated in terms of money.
11. That under the circumstances the petitioner served a contempt notice on 13.11.2017 upon the respondents-contemnors giving 3 (three) days time to comply with the aforesaid judgment and order, but the same met with no result yet. Copies of the contempt notice and postal receipt are annexed hereto and marked as **Annexure- “B” & “B-1”**.
12. That it is stated that before the serving of the aforesaid contempt notice the petitioner also requested the respondents-contemnors a lot on several occasions in person and also by written representation for complying with the aforesaid judgment and order, but the respondents-contemnors very arrogantly and vehemently paid no heed thereto.
13. That it is submitted that the conduct of the Contemnors is nothing but showing utter disregard to the authority and dignity of the highest court of the country. They have intentionally undermined the honour, dignity and authority of this Hon’ble Court by not complying with the direction as given in the said judgment and order dated 10.05.2016; and as such contempt of court proceeding is required to be drawn-up against them for the ends of justice.
14. That finding no other way the petitioner is constrained to file this contempt petition before your Lordships for violating judgment and order of this Hon’ble Court.
15. That the applicant craves kind leave of this Hon’ble Court to swear Affidavit to this Application with the photocopy of Annexure- A, original of which are lying with the office of the contemnors who will be bound to produce it before the Hon’ble Court on demand.

WHEREFORE, it is most humbly prayed that Your Lordships would graciously be pleased to :

- A) Issue a Rule Nisi calling upon the contemnors to show cause as to why a contempt of court proceeding shall not be drawn up against them for violation of the judgment and order dated 10.05.2016 passed by this Hon’ble Court in Writ Petition No. 1808 of 2014.

- B) Pending hearing of the Rule be further pleased to direct the contemnors to be present personally before this Hon'ble Court on the date or dates as may be fixed for hearing this petition.
- C) After hearing the parties, make the Rule absolute.
- D) Pass such other or further order or orders as to your Lordships may seem fit and proper.

And for this act kindness, the petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Robiul Haque, son of late Abul Kalam Azad and Joynab Azad, of House No. 145, Kumarpara, Suresh Pande Road, Post: Ghoramara, Boalia, Rajshahi City Corporation, District- Rajshahi, aged about- 50 years, by faith- Muslim, by profession- Service, by nationality- Bangladeshi, National No. 8192212236707 do hereby solemnly affirm and say as follows:-

01. That I am the petitioner of this petition and I am acquainted with the facts and circumstance of the case and as such I am competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shahadat Hossain)

Advocate

Membership # 6731

Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

CONTEMPT PETITION NO. 504 OF 2017.
(Arising out of Writ Petition No. 1808 of 2014)

IN THE MATTER OF:

An application for personal appearance of the
contemnors.

AND**IN THE MATTER OF:**

Md. Robiul Haque.

..... **Petitioner.**

-Versus-

Bangladesh Rural Development Board (BRDB) and
others.

..... **Contemnors.**

AND**IN THE MATTER OF:**

Md. Robiul Haque, Son of late Abul Kalam Azad,
Address: Suresh Pande Road, Boalia, Rajshahi.

..... **Applicant.**

AND**IN THE MATTER OF:**

1. Muhammad Maududur Rashid Safdar, Director
General of Bangladesh Rural Development Board
(BRDB), Address: Palli Bhaban, 5, Kawran Bazar,
Dhaka-1215.
2. Mohammad Abdul Qaiyum, Ex-Director General,
Bangladesh Rural Development Board (BRDB),
Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-
1215.
3. Md. Abdul Hakim, Joint Director (Admin),
Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-
1215.

..... **Contemnors-Opposite Parties.**

To,

Mr. Justice Syed Mahmud Hossain the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition of the petitioner most respectfully—

S H E W E T H:

1. This contempt petition has arisen due to non-compliance and violation by the contemnors of the judgment and order dated 10.05.2016 passed by the Hon'ble High Court Division in Writ Petition No. 1808 of 2014.
2. That the petitioner is a law abiding and permanent citizen of the People's Republic of Bangladesh. He has been serving in the development project of BRDB as "Data Entry Operator".
3. That the contemnor No. 1 is the Muhammad Maududur Rashid, Director General of Bangladesh Rural Development Board (BRDB), Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-1215, the contemnor No. 2 is the Mohammad Abdul Qaiyum, Ex-Director General, Bangladesh Rural Development Board (BRDB), Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-1215 and the contemnor No. 3 is the Md. Abdul Hakim, Joint Director (Admin), Address: Palli Bhaban, 5, Kawran Bazar, Dhaka-1215.
4. That Rule was issued in this Contempt Petition on 28.11.2017 by this Hon'ble Court.
5. That it is stated that after hearing the parties and perusing the documents in Writ Petition No. 1808 of 2014 the Hon'ble Court was pleased to dispose of the Rule by judgment and order dated 10.05.2016 with a direction upon the respondents-contemnors a absorb/regularise the service of the petitioner as "Data Entry Operator" to the Revenue Budget of B.R.D.B and to count his seniority as per said Rule subject to vacancy arises and he is no otherwise disqualified. For ready reference the stare decisis of the judgment is quoted below—

"The respondents are directed to basorb/regularize the petitioner serving as Data Entry Operator of the Development Project namely RLP of the Bangladesh Rural Development Board (BRDB) to the Revenue Budget of the BRDB under the Government of the People's Republic of Bangladesh and to count the seniority for the salary and other service benefits including time scale and selection grade of the petitioner from the date of his joining in the development project as per Rule 6 of SRO namely "উন্নয়ন প্রকল্প হইতে রাজস্ব বাজেটে স্থানান্তরিত পদের পদধারীদের নিয়মিতকরণ ও জ্যেষ্ঠতা নির্ধারণ বিধিমালা-২০০৫" contained in Memo SRO No. 182/Ain/2005/somo/Bidhi-I/S-9/2000 dated 20.06.2005 (Annexure- G) issued by the Office of the respondent No. 2 under the Order of the Hon'ble President of the Republic which they are permitted/required by law to do vacancy arises subject to the condition that they are otherwise not disqualified.

In view of the observations as made above the rule is disposed of without any order as to cost."

6. That it is stated that although the said judgment of this Hon'ble Court in the said Writ Petition No. 1808 of 2014 and the Rule issuing order dated 28.11.2017 in this Contempt Petition were duly communicated with the contemnors-opposite parties but they did not comply with this direction of this Hon'ble Court. In addition, the petitioner also submitted legal notice on 30.01.2018 about the Rule issue in this Contempt Petition but the same was met with no response from the contemnors.

7. That under the circumstances, already a long time has already been passed after the said judgment dated 10.05.2016 and order dated 28.11.2017, but the contemnors have not taken any positive steps yet. Therefore, now it becomes inevitable to bring the contemnors before this Hon'ble Court for their non-compliance and violation of the said judgment and Order. As such, the contemnors-opposite parties may kindly be directed to appear before this Hon'ble Court for their non-compliance and violation of the said judgment and Order, otherwise the petitioner is suffering serious loss and injury which may not be compensated in terms of money.

WHEREFORE, it is most humbly prayed that Your Lordships would graciously be pleased to direct the contemnors-opposite parties to appear in person before this Hon'ble Court for their non-compliance of violation of the said judgment dated 10.05.2016 and Order dated 28.11.2017 and/or pass such other or further order or orders as to your Lordships may seem fit and proper.

And for this act kindness, the petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Robiul Haque, son of late Abul Kalam Azad and Joynab Azad, of House No. 145, Kumarpara, Suresh Pande Road, Post: Ghoramara, Boalia, Rajshahi City Corporation, District- Rajshahi, aged about- 50 years, by faith- Muslim, by profession- Service, by nationality- Bangladeshi, National No. 8192212236707 do hereby solemnly affirm and say as follows:-

01. That I am the petitioner of this petition and I am acquainted with the facts and circumstance of the case and as such I am competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shahadat Hossain)
Advocate
Membership # 6731
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL STATUTORY JURISDICTION)**

CONTEMPT PETITION NO. 287 OF 2019

(Arising out of writ Petition Nos. 6936 and 8015 of 2013)

IN THE MATTER OF:

An application for giving further intimation/reminder
upon the respondents-contemnors.

AND

IN THE MATTER OF:

Md. Abul Hasan Miah and others.

..... **Petitioners.**

-VERSUS -

Mr. Mohammad Muslim Chowdhury, Comptroller and
Auditor General of Bangladesh, of Audit Bhaban, 77/7,
Kakrail, Dhaka-1000 and others.

..... **Respondents-Contemnors.**

AND

IN THE MATTER OF:

Rezaul Karim, Son of Ishaque, Bench Officer, Supreme
Court of Bangladesh, High Court Division, Dhaka.

..... **Petitioner No.5 -Applicant.**

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion
justices of the said Hon'ble Court.

The humble petition of the applicant most
respectfully—

S H E W E T H :

1. This contempt petition has arisen due to non-compliance and violation by the contemnors of the judgment and order dated 3.12.2014 passed by the High Court Division in Writ Petition Nos. 6936 of 2013 analogously heard with Writ Petition No. 8015 of 2013 which

was subsequently affirmed by the Appellate Division in Civil Appeal Nos. 250-251 of 2015 vide judgment and order dated 15.02.2017 and thereafter in Civil Review Petition Nos. 438-439 of 2017 vide judgment and order dated 9.11.2017.

2. That after hearing the learned Advocate for the petitioners the Hon'ble Court was pleased to issue Rule vide Order dated 19.05.2019.
3. That it has already been 5 (five) months since the said Rule was issued; but the respondents-contemnors have not taken any effective initiative for complying with the Rule, thus to implement and execute the judgment and order dated 3.12.2014 passed by the High Court Division in Writ Petition Nos. 6936 of 2013 analogously heard with Writ Petition No. 8015 of 2013 which was subsequently affirmed by the Appellate Division in Civil Appeal Nos. 250-251 of 2015 vide judgment and order dated 15.02.2017 and thereafter in Civil Review Petition Nos. 438-439 of 2017 vide judgment and order dated 9.11.2017.
4. That under the circumstances, the petitioner-applicant is kindly seeking for giving further intimation/reminder upon the respondents-contemnors for ends of justice.

WHEREFORE, it is humbly prayed that Your Lordships would graciously be pleased to pass necessary order/ orders for giving further intimation/reminder upon the respondents-contemnors for complying with/implementing the judgment and order dated 3.12.2014 passed by the High Court Division in Writ Petition Nos. 6936 of 2013 analogously heard with Writ Petition No. 8015 of 2013 which was subsequently affirmed by the Appellate Division in Civil Appeal Nos. 250-251 of 2015 vide judgment and order dated 15.02.2017 and thereafter in Civil Review Petition Nos. 438-439 of 2017 vide judgment and order dated 9.11.2017 for ends of justice and /or pass such other or further order or orders as your Lordships may seem fit and proper.

And for this act kindness, the applicant as in duty bound shall ever pray.

A F F I D A V I T

I, Rezaul Karim, Son of Ishaque, Bench Officer, Supreme Court of Bangladesh, High Court Division, Dhaka, aged about- years, by profession- Service, by nationality- Bangladeshi, National No. 7813871847105 do hereby solemnly affirm and say as follows:-

01. That I am the petitioner No. 5 of this petition and the authorized person on behalf of the other writ petitioners and I am acquainted with the facts and circumstance of the case and as such I am competent to swear the Affidavit.

02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Palash Debnath)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2019
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Palash Debnath)

Advocate

Membership # 6731

Hall Room No.2, Supreme

Court Bar Association Building

Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL STATUTORY JURISDICTION)**

CONTEMPT PETITION NO. 287 OF 2019

(Arising out of writ Petition Nos. 6936 and 8015 of 2013)

IN THE MATTER OF:

An application for addition of parties as the respondent-contemnor nos. 14-16 and issuing of supplementary Rule Nisi upon them.

AND

IN THE MATTER OF:

Md. Abul Hasan Miah and others.

..... **Petitioners.**

-VERSUS -

Mr. Mohammad Muslim Chowdhury, Comptroller and Auditor General of Bangladesh, of Audit Bhaban, 77/7, Kakrail, Dhaka-1000 and others.

..... **Respondents-Contemnors.**

AND**IN THE MATTER OF :**

Rezaul Karim, Son of Ishaque, Bench Officer, Supreme Court of Bangladesh, High Court Division, Dhaka.

..... **Petitioner No.5 -Applicant.**

-V E R S U S-

1. Ms. Kamrun Nesa, Deputy Account Officer (Procedure), of CGA Bhaban, Segunbagicha, Dhaka-1000.
2. Md. Zahurul Islam, Controller General of Accounts, of CGA Bhaban, Segunbagicha, Dhaka-1000.
3. Md. Ali Akbbar, the Registrar General, Supreme Court of Bangladesh, Ramna, Dhaka-1000.

..... **Opposite Parties -Respondents-
Contemnors Nos. 14-16**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition of the applicants most respectfully—

S H E W E T H :

1. This contempt petition has arisen due to non-compliance and violation by the contemnors of the judgment and order dated 3.12.2014 passed by the High Court Division in Writ Petition Nos. 6936 of 2013 analogously heard with Writ Petition No. 8015 of 2013 which was subsequently affirmed by the Appellate Division in Civil Appeal Nos. 250-251 of 2015 vide judgment and order dated 15.02.2017 and thereafter in Civil Review Petition Nos. 438-439 of 2017 vide judgment and order dated 9.11.2017.
2. That after hearing the learned Advocate for the petitioners the Hon'ble Court was pleased to issue Rule vide Order dated 19.05.2019.

3. That the tenure of earlier contemnor No. 4 namely Mr. Abul Foyez Md. Abid, Controller General of Accounts, of CGA Bhaban, Segunbagicha, Dhaka-1000 expired already, and the following person has come into his position; and as such the following person may kindly be added to this contempt petition for ends of justice—
“4. Mr. Md. Zahurul Islam, Controller General of Accounts, of CGA Bhaban, Segunbagicha, Dhaka-1000.”
4. That it is stated that the tenure of earlier contemnor No. 5 namely Mr. Mia Mohammad Mojibul Hoque, Deputy Account Officer (Procedure), of CGA Bhaban, Segunbagicha, Dhaka-1000 expired already, and the following person has come into his position and now he is functioning as the Deputy Account Officer (Procedure), of CGA Bhaban, Segunbagicha, Dhaka-1000; and as such the following person may kindly be added to this contempt petition for ends of justice—
“Ms. Kamrun Nesa, Deputy Account Officer (Procedure), of CGA Bhaban, Segunbagicha, Dhaka-1000.”
5. That the tenure of earlier contemnor No. 10 Dr. Md. Zakir Hassain, the Registrar General, Supreme Court of Bangladesh, Ramna, Dhaka-1000 has been expired already, and the following person has come into his position; and as such the following person may kindly be added to this contempt petition for ends of justice—
“10. Md. Ali Akbbar, the Registrar General, Supreme Court of Bangladesh, Ramna, Dhaka-1000.”
6. That under the circumstances, the proposed opposite parties may kindly be added as the respondent – contemnor nos. 14-16 in this contempt petition for ends of justice and a supplementary Rule may kindly be issued upon them for proper adjudication in this case.
7. That earlier the learned Advocate came up with two supplementary affidavits for substituting/adding the aforesaid persons as opposite party-contemnors, but those supplementary affidavit were not in proper format; for which the learned Advocate begs unconditional apology. For her mistake, the petitioners-applicants shall not let suffer. Therefore, the aforesaid persons may kindly be added as opposite party-contemnor Nos. 14-16 in this case for ends of justice.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to pass necessary order/ orders for adding the proposed opposite parties as the respondent- contemnor nos. 14-16 in this contempt case as mentioned in paragraph Nos. 3-5 and to issue supplementary Rule upon them along, with the respondent no. 1 to show cause as to why a contempt of court proceeding shall not be drawn up against them for violation of the judgment and order dated 3.12.2014 passed by the High Court Division in Writ Petition Nos. 6936 of 2013 analogously heard with Writ Petition No.

8015 of 2013 which was subsequently affirmed by the Appellate Division in Civil Appeal Nos. 250-251 of 2015 vide judgment and order dated 15.02.2017 and thereafter in Civil Review Petition Nos. 438-439 of 2017 vide judgment and order dated 9.11.2017 and after hearing the parties and perusing the cause shown, if any, make the Rule absolute for ends of justice and /or pass such other or further order or orders as your Lordships may seem fit and proper.

And for this act kindness, the applicant as in duty bound shall ever pray.

AFFIDAVIT

I, Rezaul Karim, Son of Ishaque, Bench Officer, Supreme Court of Bangladesh, High Court Division, Dhaka, aged about- years, by profession- Service, by nationality- Bangladeshi, National No. 7813871847105 do hereby solemnly affirm and say as follows:—

01. That I am the petitioner No. 5-applicant of this petition and the authorized person on behalf of the other writ petitioners and I am acquainted with the facts and circumstance of the case and as such I am competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Syeda Nasrin)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of February, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Syeda Nasrin)

Advocate

Membership # 6731

Hall Room No.2, Supreme

Court Bar Association Building

Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

CONTEMPT PETITION NO. 287 OF 2019.
(Arising out of Writ Petition Nos. 6936 & 8015 of 2013)

IN THE MATTER OF:

An application for personal appearance of the
contemnors.

AND**IN THE MATTER OF:**

Md. Abul Hasan Miah and others.

..... **Petitioners.**

-Versus-

Mr. Mohammad Muslim Chowdhury and others.

..... **Respondents-Contemnors.**

AND**IN THE MATTER OF:**

Rezaul Karim, Son of Ishaque, Bench Officer, Supreme
Court of Bangladesh, High Court Division, Dhaka

..... **Petitioner No. 5-Applicant.**

AND**IN THE MATTER OF :**

1. Mr. Mohammad Muslim Chowdhury, Comptroller and Auditor General of Bangladesh, of Audit Bhaban, 77/7, Kakrail, Dhaka-1000.
2. M/s. Selina Rahman, Additional Deputy Comptroller and Auditor General, of Audit Bhaban, 77/7, Kakrail, Dhaka-1000.
3. Mr. Saifur Rahman, Deputy Comptroller and Auditor General (Procedure), of Audit Bhaban, 77/7, Kakrail, Dhaka-1000.
4. Mr. Abul Foyez Md. Abid, Controller General of Accounts, of CGA Bhaban, Segunbagicha, Dhaka-1000.

5. Mr. Mia Mohammad Mojibul Hoque, Deputy Account Officer (Procedure), of CGA Bhaban, Segunbagicha, Dhaka-1000.
6. Mr. Md. Tofazzal Hossain, Chief Accounting Officer, Office of Chief Accounting Officer, Supreme Court of Bangladesh, Accounts Bhaban (Level-5), Segunbagicha, Dhaka-1000.

..... **Contemnors-Opposite Parties.**

To,

Mr. Justice Syed Mahmud Hossain the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition of the petitioners most respectfully—

S H E W E T H:

1. This contempt petition has arisen due to non-compliance and violation by the contemnors of the judgment and order dated 19.05.2019 passed by the Hon'ble High Court Division in Writ Petition No. 6939 & 8015 of 2013.
2. That the petitioner nos. 1-28 are the Bench Officers of the High Court Division and the Petitioner Nos. 29-33 are the Bench Readers of the Appellate Division. Their services descriptions have been stated in the main Contempt Petition.
3. That the petitioners filed writ petition Nos. 6939 & 8015 of 2013 which were heard analogously and after final hearing of those, the Rules were made absolute *vides* judgment and order dated 3.12.2014 with direction in the following manner—

“In the result, the Rules issued in Writ Petition No. 6263 of 2014 and Writ Petition No. 6264 of 2014 are made absolute.

In Writ Petition No. 6263 of 2014, the respondents are directed to grant selection grade and pay scale to the petitioners and others standing on the same footing as of the petitioners in Grade 6, that is Tk. 11000-475 × 14-17650 as per National Pay Scale, 2005 and Tk. 18500-800 × 14-29700 as per National Pay Scale, 2009 from the date of completion of four years service as Bench Officers in Class I post in the High Court Division of the Supreme Court of Bangladesh with all arrears upon modification of the orders under Notification No. 260 G dated 11.12.2011 circulated under Memo No. 23921 G dated 11.12.2011, Notification No. 105 G dated 19.06.2012 circulated under Memo No. 9735 G dated 19.06.2012 and Notification No. 243 G dated 31.12.2012 circulated under Memo No. 25009-16 G dated 31.12.2012 all issued under the signature of respondent No. 4, the Registrar, Supreme Court of Bangladesh (Annexure- F, F-1 and F2) and other similar notifications circulated in this regard granting selection grade within 30 (thirty) days from the date of receipt of this judgment.

In Writ Petition No. 6264 of 2014, the respondents are directed to grant selection grade and pay scale in Grade 6, that is, Tk. 7200-260 \times 14-10840 as per the National Pay Scale, 1997 and Tk. 185000-800 \times 14-29700 as per National Pay Scale, 2009 to the petitioner No. 1 and Tk. 11000-475 \times 14-17650 as per National Pay Scale, 2005 and Tk. 18500-800 \times 14-29700 as per National Pay Scale, 2009 to the petitioner Nos. 2 to 4 from the date of completion of four years service as Bench Readers of the Appellate Division of the Supreme Court of Bangladesh with all arrears upon modification of the orders Notification No. 3095/2013 এসসি (এডি) dated 10.10.2013 (Annexure- F) issued under the signature of the Deputy Registrar, Appellate Division within 30 (thirty) days from the date of receipt of this judgment.

This judgment and order shall equally apply and shall be available to other Bench Officers and Bench Readers, if any, who are not petitioners before us but stand on the same footing as those of the petitioners.

In the instant case we note that there are no allegations whatsoever against the petitioners, rather they have been rendering unblemished service in their respective posts. Therefore, in the facts and circumstances of the case and laws discussed above we are of the view that the petitioners are entitled to get selection grade as prayed for from the date of completion of 4 (four) years in service as Bench Officers and Bench Readers respectively.

In *BADC vs. Shamsul Haque* (2008) 60 DLR (AD) 152 the Apex Court has held that where a case can be decided without striking down the law, that course has to be adopted.

Since we have already held that the petitioners are entitled to get selection grade as prayed for, therefore, in view of the law declared by the Apex Court in *BADC* case we do not consider it relevant as well as necessary to discuss about the first limb of the instant Rules i.e., constitutionality of Article 7(7) of the Order, 2009.

In view of the facts, circumstances and laws discussed hereinbefore, we are constrained to hold that the Rules in both the writ petition so far as they relate to direction upon the respondents to grant the petitioners, selection grade have merit and thus the Rules are bound to succeed.

In the result, the Rules and the supplementary Rules issued in both the writ petitions are made absolute in part.

The respondents are direct to grant selection grade to the petitioners from the date of completion of 4 (four) years in service as Bench Readers and Bench Officers. The respondents are further directed to give selection grade and pay scale in Grade- VI, that is, Tk. 18500-800 \times 14-29700 as per National Pay Scale, 2009 to the petitioners with all arrears within 30 (thirty) days from the date of receipt of this judgment positively.”

4. That against the said judgment, the writ respondents filed Civil Appeal Nos. 250-251 of 2015 before the Hon’ble Appellate Division. After hearing the said Appeals, the Hon’ble Appellate Division dismissed the appeals vides judgment and order dated 15.02.2017. Against this, they filed Civil Review Petition Nos. 438-439 of 2017 which were dismissed too vides judgment and order dated 9.11.2017.

5. That in light of said judgments, all the petitioners upon fulfilling their service period of 4 (four) years in the concerned posts are entitled to the Selection Grade from Grade No. 8 to grade No. 6 of the National Pay Scale, 2005 and 2009. It is pertinent to mention that some of the equal footing officers have already been given with the Selection Grade No. 6. ‘Bench Officer’ as a post in the High Court Division is equal for all the Officers as Bench Officers. There are currently 110 (one hundred and ten) Bench Officers working in the High Court Division, and some of them have already been upgraded to the Grade No. 6 in pursuant to the aforesaid consistent judgments of the High Court Division and the Appellate Division. Accordingly, upon fulfilling 4 (four) years, some of the petitioners communicated with the office of the contemnors. It is also mentionable here that the Ministry of Finance and Ministry of Law, Justice and Parliamentary Affairs took step for executing the said judgment on the basis of “standing on same footing” which is evident from their letters dated 10.07.2018 and 19.07.2018. Thereafter, twelve officers were given Grade No. 6 vide circular dated 12.08.2018 by the Registrar Office of the High Court Division, Supreme Court of Bangladesh. But when the same was forwarded to the office of the contemnor Nos. 1-6, they forwarded a letter on 15.11.2018 under the signature of the contemnor No. 5 to the office of the contemnor No. 6 for opinion and further action.
6. That under the circumstances, the contemnor No. 6 vides a letter dated 29.04.2019 informed that “যেহেতু জাতীয় বেতনস্কেল/২০০৯ এর আওতায় সিলেকশন গ্রেড স্কেল প্রাপ্যতার সর্বশেষ তারিখঃ ১৫/১২/২০১৫ খ্রিঃ সেহেতু ২০১৫ সালের বেতন স্কেলে ২০১৬ সালের প্রাপ্য তারিখে বর্ণিত প্রতিপাদন করা সম্ভব হচ্ছে না।” This kind of statement is absolutely derogatory, violative and nugatory of the aforesaid consistent judgments of our Apex Court. The non-execution or non-implementation of said judgment of our Apex Courts by the contemnors is a flagrant disrespect and contemptuous to the proceedings of the Court. In fact, all the petitioners upon fulfilling their 4 (four) years are entitled to get the Grade No. 6 as per the said judgments of the High Court Division and the Appellate Division, but the contemnors’ denial and non-execution of the said judgments are not only denying the rights of the petitioners as mentioned under serial nos. 1-12 but also denying the right of all the petitioners who are equally entitled to get Grade No. 6 of National Pay Scale, 2009 upon fulfilling their 4 (four) years.
7. That the contemnors have failed to comply with the judgment and order of the High Court Division as upheld by the Appellate Division. The judgment and order of the High Court Division (as upheld by the Appellate Division) is still valid and binding upon you. Being the government officers the contemnors are under the constitutional duty to obey and respect the judgment and orders of the High Court Division. However, till date the contemnors have not complied with the judgment and order of the High Court Division (as upheld by the Appellate Division).
8. That it is apparent that the contemnors’ intention is to avoid the processes of the court and to render the Judgment and Orders of the Hon’ble High Court Division and Appellate Divisions void and ineffective. This is a serious abuse of the process of the court. Such conduct is contemptuous in nature and unbecoming of a public servant.

9. That under the circumstances, the petitioners served contempt notice on 7.05.2019 upon the contemnors which was received by them on the same date, but the same has met with no result yet.
10. That it is submitted that the conduct of the Contemnors is nothing but showing utter disregard to the authority and dignity of the highest court of the country. They have intentionally undermined the honour, dignity and authority of this Hon'ble Court by not executing/complying with the directions as given in the said judgment and order dated 3.12.2014 passed by the High Court Division in Writ Petition Nos. 6936 of 2013 analogously heard with Writ Petition No. 8015 of 2013 which was subsequently affirmed by the Appellate Division in Civil Appeal Nos. 250-251 of 2015 vide judgment and order dated 15.02.2017 and thereafter in Civil Review Petition Nos. 438-439 of 2017 vide judgment and order dated 9.11.2017; and as such contempt of court proceeding is required to be drawn-up against them for the ends of justice. Under the circumstances, the petitioners filed Contempt Petition No. 287 of 2019 before this Hon'ble Court. After hearing the learned Advocate for the petitioners, this Hon'ble Court was pleased to issue Rule and to direct the petitioner to serve the copy of Rule upon the contemnors-respondents by a Special Messenger vides order dated 19.05.2019. Thereafter, the order was duly served by a Special Messenger upon the contemnors-respondents, but the same has not been complied with yet by the respondents-contemnors-opposite parties. The contemnors are still to show any positive sign for implementing the said judgments of the Supreme Court of Bangladesh. In view of the above, the contemnors may kindly be directed to appear personally before this Hon'ble Court for explaining their actions of violating the said judgments of this Hon'ble Court.
11. That for filing this contempt matter and to carry out all necessary formalities and appearing before the Hon'ble Court, Affidavit Commissioner, signing Wokalatnama, petitions and other documents, the petitioners have executed a Power of Attorney in favor of Rezaul Karim. Copy of the Power of Attorney has already been annexed in the original contempt petition.

WHEREFORE, it is most humbly prayed that Your Lordships would graciously be pleased to direct the contemnors-opposite parties to appear in person before this Hon'ble Court for violating and non-executing the judgment and order dated 3.12.2014 passed by the High Court Division in Writ Petition Nos. 6936 of 2013 analogously heard with Writ Petition No. 8015 of 2013 which was subsequently affirmed by the Appellate Division in Civil Appeal Nos. 250-251 of 2015 vide judgment and order dated 15.02.2017 and thereafter in Civil Review Petition Nos. 438-439 of 2017 vide judgment and order dated 9.11.2017 and/or pass such other or further order or orders as to your Lordships may seem fit and proper.

And for this act kindness, the petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Rezaul Karim, Son of Ishaque, Bench Officer, Supreme Court of Bangladesh, High Court Division, Dhaka, aged about- years, by profession- Service, by nationality- Bangladeshi, National No. 7813871847105 do hereby solemnly affirm and say as follows:-

01. That I am the petitioner No. 5 of this petition and the authorized person on behalf of the other writ petitioners and I am acquainted with the facts and circumstance of the case and as such I am competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Syeda Nasrin)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2019
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Syeda Nasrin)
Advocate
Membership # 6731
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

CONTEMPT PETITION NO. 96 OF 2014.
(Arising out of Writ Petition No. 891 of 1994)

IN THE MATTER OF:

Advocate Asaduzzaman Siddiqui.

..... **Petitioner.**

-Versus-

Mohammad Moinuddin Abdullah, the Secretary,
Ministry of Industries and others.

..... **Respondents.**

Affidavit-in-compliance on behalf of the Respondent No. 16-

I, Arefin Shamsul Alamin, son of A K Shamsul Alamin and Mrs. Jahanara Alamin, of Permanent Address: House No. 18, Road No. 116, Gulshan, Gulshan, Dhaka, and Present Address: Shamsul Alamin Group, Alamin Center 25/A, Dilkusha C/A, Uttara, Uttara, Dhaka, aged about- 48 years, by faith - Muslim, by profession- Business, by nationality- Bangladeshi, Passport No. BK0539038 do hereby solemnly affirm and say as follows :—

1. That I am the Managing Director of Rana Leather Industries Limited and I am acquainted with the facts and circumstances of this case; as such I am competent to swear this affidavit.
2. That this contempt proceeding has been drawn by the petitioner against the respondents alleging inter alia that the respondents violated the judgment and order dated 15.07.2001 passed by the Hon'ble High Court Division in Writ Petition No. 891 of 1994. On 15.04.2014 after hearing the petitioner the Hon'ble Court was pleased to issue a Rule Nisi calling upon the respondents to show cause as to why a proceeding of contempt of Court should not be drawn against them for violation of direction given by this Hon'ble Court.
3. That subsequently, the petitioner filed an application for addition of 10 (ten) owners of industries as contemnors-respondent Nos. 16-25 alleging that though these owners of industries received the notice but did not shift their tanneries as yet. The instant deponent has been implicated as the respondent No. 16. After hearing the petitioner the Hon'ble Court directed the respondents Nos. 16-25 to appear in person before the Hon'ble Court, positively on 10.04.2016 at 10:30 am to explain their conduct vide Order dated 23.03.2016. This matter was published widely in several national daily newspapers. This deponent has come to know from the report of the newspaper and also from the notice which was served upon him. Therefore, in compliance with the aforesaid Order of the Hon'ble Court, the respondent No. 16 is filing this affidavit-in-compliance.
4. That the respondent No. 16 closed/shut-down his business in the alleged place at 9, Hajaribag, Dhaka-1209 in the year 2008, and it confirmed its permanent closure of factory and business in the said place in January 2009. All connections including electricity, gas and water were made disconnected and machineries were sold long ago, which have been also confirmed by the Government in their report. Thereafter, the respondent No. 16 transferred the factory of the company to a new place allotted by the Government in plot No. SX-5, Tannery Estate, Savar, Dhaka. Photocopies of some papers confirming closing of the factory in the alleged place and transferring of business of the respondent No. 16 from the alleged place to the newly allotted place are annexed hereto and marked as **Annexure- "1" Series.**

5. That the respondent No. 16 has almost completed the construction works in setting up its office and factory in the newly allotted place, though yet to run the project. In fact, the respondent No. 16 has not received any compensation from the Government as yet. For ready reference some photographs of the construction and establishment of the business of the respondent No. 16 in new place are annexed hereto and marked as **Annexure- "2"**.
6. That under the aforesaid circumstances, there arises no question of violation or acting in derogation of the aforesaid Order and Direction of this Hon'ble Court. The respondent No. 16 is always humble and respectful to this Hon'ble Court. Moreover, for any kind of mistake or error the deponent begs unconditional apology before this Hon'ble Court.
7. That therefore, the respondent No. 16 may kindly be excluded from the list of contemnor in this case for ends of justice.
8. That the deponent craves leave of the Hon'ble Court to swear affidavit with photocopies of the annexures, original copies of which are remained with the office of the deponent and he shall be bound to produce original copies as per order of this Hon'ble Court. The deponent undertakes that the photocopies annexures are to reflection of the original copies.
9. That the statements made in this affidavit are true to my knowledge and matters of records, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Syeda Nasrin)

Advocate

DEPONENT

The deponent is known to me
and identified by me.

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this the.....th day of, 2016
at A.M./P.M.

(Syeda Nasrin)

Advocate

Membership # 6731

Hall Room No.2, Supreme Court

Bar Association Building

Mobile: 01711-041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

CHAPTER 17

Income Tax Reference, VAT Revision and Custom Appeal

Any person aggrieved by order of an income tax authority regarding assessment of income, computation of tax liability or refund, set off or carry forward of loss, imposition of any penalty or interest, charge and computation of surcharge or any other sum, credit of tax, and payment of a refund may prefer appeal to the respective appellate income-tax authority.¹ Appeal to the Commissioner of Taxes (Appeals) can be made a company, against an order under section 120, appeal against an order of adjustment or penalty involving international transactions as defined in 107A, and against an order passed by an income tax authority in the rank of a Joint Commissioner of Taxes or above.² No appeal shall lie in respect of an income which is computed as a share of the taxed income. No appeal shall lie against any order of assessment in the following cases—

(i) Where the return of income was filed	if tax under section 74 has not been paid
(ii) Where no return of income was filed	if at least ten per cent of the tax as determined by the Deputy Commissioner of Taxes has not been paid

Appeal should be filed within time. Limitation Act 1908 applies here. Against any decision passed in the said appeal, the aggrieved party can file further appeal to the Appellate Tribunal satisfying the terms and conditions as mentioned therein.³ Against the judgment or order of the Tribunal, the aggrieved party may file income tax reference.⁴

Alternatively, the aggrieved party can file revision on condition to self-waive its right to file appeal. Section 121A⁵ is a new addition to the Act which was inserted by section 34 of the

1. Section 153(1) of the Income Tax Ordinance, 1984.

2. Section 153(2), Ibid.

3. Section 158, Ibid.

4. Section 160, Ibid.

5. It states that—

- (1) The Commissioner may on an application made by the assessee, call for the record of any proceeding under this Ordinance in which an order has been passed by any authority subordinate to him and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Ordinance, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.
 - (2) The application for revision of an order under this Ordinance passed by any authority subordinate to the Commissioner shall be made within sixty days of the date on which such order is communicated to the assessee or within such further period as the Commissioner may consider fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within the said sixty days.
 - (3) The Commissioner shall not exercise his power under sub-section (1) in respect of any order—
 - (a) Where an appeal against the order lies to the Appellate Joint Commissioner or to the Commissioner (Appeals) or to the Appellate Tribunal and the time within which such appeal may be made has not expired or the assessee has not waived his right of appeal; or
 - (b) where the order is pending on an appeal before the Appellate Joint Commissioner or it has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.
 - (4) No application under sub-section (1) shall lie unless-
 - (a) it is accompanied by a fee of two hundred taka; and
 - (b) the undisputed portion of the tax has been paid.

Explanation.-The “undisputed portion of the tax” means the tax payable under section 74.
 - (5) For the purposes of this section, an order by the Commissioner declining to interfere shall not be construed as an order prejudicial to the assessee.
 - (6) Notwithstanding anything contained in this Ordinance, an application for revision made under sub-section (1) shall be deemed to have been allowed if the Commissioner fails to make an order thereon within a period of sixty days from the date of filing the application.
- Explanation : For the purposes of this section, the Appellate Joint Commissioner of Taxes shall be deemed to be an authority subordinate to the Commissioner to whom the Deputy Commissioner of Taxes, whose order was the subject-matter of the appeal order under revision, is subordinate.

Finance Act 2009 (Act No. XXXVI of 2009) (with effect from 1st July 2009). There is no other alternative forum made in the Act against any order/decision/judgment. Therefore, finding no other alternative, the aggrieved party can file writ petition before the High Court Division under Article 102 of our Constitution.

Similarly, under section 42 of the Value Added Tax Act 1991 an appeal can lie to the Commissioner of Appeal, then to the Appellate Tribunal, and subsequently to the High Court Division on fulfillment of terms and conditions laid therein. But this Act is no more in force now. Under the present law i.e. Value Added Tax and Supplementary Act 2012, a revision application could be filed under Section 124 before the Hon'ble High Court Division by depositing 10% of the demand amount or fine. Delay in filing revision could be condoned. Limitation Act 1908 applies to this provision. VAT Revision was in force from July 2019 to June 2021. Now, the word revision has been replaced with the word appeal.

Therefore, from 1st July 2021, there is no more VAT revision. Now it is VAT Appeal.

Likewise, under sections 193 – 196 of the Customs Act 1999 an appeal can lie to the Commissioner of Appeal, then to the Appellate Tribunal, and subsequently to the High Court Division on fulfillment of terms and conditions laid therein.

In all the above cases, dispute can also be resolved going to Alternative Dispute Resolution (ADR) process which has gained much attention now-a-days.

Sample

IN THE SUPREME COURT OF BANGLADESH HIGH COURT DIVISION (SPECIAL STATUTORY JURISDICTION)

INCOME TAX REFERENCE APPLICATION NO. OF 2019

IN THE MATTER OF:

An application under section 160(1) of the Income Tax Ordinance 1984.

A N D

IN THE MATTER OF:

Md. Muzammel Hossain, Proprietor of M/s. Muzammel Store, of Ga-36/4, Maddha Badda, Dhaka.

..... **APPLICANT.**

-Versus -

The Additional Assistant Commissioner of Taxes,
Circle-171, Tax Zone -8, Dhaka.

..... **RESPONDENT.**

AND

IN THE MATTER OF:

Order dated 31.01.2016 of the Taxes Appellate Tribunal, Division Bench-3, Dhaka passed in the Income Tax Appeal No. 2717 of 2015-2016 (Assessment Year 2012-2013) arising out of the order dated 30.07.2015 passed by the Appellate Joint Commissioner of Taxes, Appellate Range-3, Tax Appeal Zone-1, Dhaka arising out of order dated 10.09.2014 passed by the Additional Assistant Commissioner of Taxes, Circle-171, Tax Zone-8, Dhaka.

To

Mr. Justice Syed Mahmud Hossain, the Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition of the applicant above-named most respectfully—

S H E W E T H:

1. That the petitioner is a lower earning citizen of our country. He is law abiding and peace loving. Few years ago he had a small store which is closed now. Now he along with his entire family is depending on income arising from house rent.
2. That the applicant filed his Return of Income for the Assessment Year 2012-2013 showing total income amounting Tk. 3,00,000/-, against which the Additional Assistant Commissioner of Taxes raised objection and assessed tax afresh. In the final assessment under section 82BB(1)/82BB(3)/83(2) of the Income Tax Ordinance, 1984 (*henceforth referred to as the ITO*), the Additional Assistant Commissioner of Taxes determined total income as Tk. 33,72,652/-vide order dated 10.09.2014. In calculating the total taxable income the Additional Assistant Commissioner of Taxes very arbitrarily and illegally disallowed several compulsory expenses in daily life and business. The Additional Assistant Commissioner of Taxes more arbitrarily disallowed the return of the applicant. In doing so the respondent highly failed to consider that the income and expenses showed in the relevant income year do not show any inconsistency or anomaly. The current return was absolutely in harmony with the returned a submitted by the applicant. Certified copy of the order dated 10.09.2014 is annexed hereto and marked as **Annexure- “A”**.
3. That being aggrieved by and dissatisfied with the aforesaid order the applicant filed appeal before the Joint Commissioner of Taxes (Appeal), Appellate Range-3, Tax Appeal Zone-1, Dhaka who after hearing both the parties and perusing the documents allowed the appeal in part vide order dated 30.07.2015. On the basis of said order the Additional Assistant Commissioner of Taxes issued demand notice on 20.08.2015. The Commissioner of Appeal also uphold those as disallowed by the Additional Assistant Commissioner of Taxes to a

significant extent except a few. Certified copies of the order dated 30.07.2015 and 20.08.2015 are annexed hereto and marked as **Annexure- “B” & “B-1”**.

4. That thereafter, being aggrieved and dissatisfied with the aforesaid order, the applicant filed an appeal being I.T.A. No. 2717 of 2015-2016 and before the Taxes Appellate Tribunal, Division Bench-3, Dhaka, who after hearing the parties and perusing the documents disallowed the appeal vide order dated 31.01.2016. On the basis of the said order of Tribunal, the Additional Assistant Commissioner of Taxes calculated tax on 3.03.2016 and subsequently issued demand notice on the same date. Certified copies of the order dated 31.01.2016 and tax calculation dated 3.03.2016 are annexed hereto and marked as **Annexure- “C” & “C-1”**.
5. That it is stated that the Tribunal, CT(A) and ACT did not consider the expenses in according to the real accounts and actual expenses as incurred by the applicant, and did not consider the actual cost which was in consistent and coherent in line of earlier years and tax returns. The real expenses which were not whimsically, arbitrarily and unreasonably considered by the ACT were the actual cost of the applicant and the same cannot be considered as income for the purpose of calculation of tax. As such, the impugned orders are liable to be set aside for ends of justice.
6. That on the facts and circumstances of the case, the following questions of law are formulated that have arisen out of the order of the tribunal for decision of the Hon’ble Court—

Question of Law

- i. Whether on the facts and circumstances of the case the Taxes Appellate Tribunal, under section 159(2)/30A/83(2) of the Income Tax Ordinance, 1984 is legally justified to disallow the real expenses of the applicant along with loan repayment and family expenses and the income from rent and thereby imposing/calculating GP @ 15% thereto without assigning any cogent reason or factual basis?
- ii. Whether on the facts and circumstances of the case the Tribunal was justified in disallowing several expenses without any cogent reason and factual & legal basis?
- iii. That being dissatisfied with the order of the tribunal, the applicant preferred this application for decision of this Hon’ble Court on the following grounds amongst others—

= GROUNDS=

- i. For that on the fact and circumstances of the case, the Taxes Appellate Tribunal under section 159(2)/30A/83(2) of the Income Tax Ordinance was not legally justified to disallow the real expenses of the applicant along with loan repayment and family expenses and the income from rent and thereby imposing/calculating GP @ 15% thereto without assigning any cogent reason or factual basis.
- ii. For that on the facts and circumstances of the case the tribunal was not justified in disallowing several obvious expenses of the applicant without checking the reality and field inspection and also without any cogent reason and factual & legal basis.

WHEREFORE, it is most humbly prayed that Your Lordships may graciously be pleased to decide the questions of law as formulated in paragraph 6 of this application in favour of the applicant and/or pass such other or further order or orders as to your Lordships may deem fit and proper.

And for this act kindness, the applicant as in duty bound shall ever pray.

A F F I D A V I T

I, Md. Muzammel Hossain, son of Abdul Mannan Howlader and Naichatan Bibi, proprietor of M/s. Muzammel Store, of Ga-36/4, Maddha Badda, Dhaka, House No. 06, Road- Lowher Tec, Post Office- Gulshan-1212, Badda, Dhaka, by profession- Business, aged about- 58 years, by faith Muslim, by nationality Bangladeshi, National ID No. 7330088563 do hereby solemnly affirm and say as follows :—

01. That I am the Proprietor of the applicant in this case and well-conversant with the facts of this case and competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL STATUTORY JURISDICTION)**

INCOME TAX REFERENCE APPLICATION NO. OF 2019

IN THE MATTER OF:

An application under section 160(4) of the Income Tax Ordinance 1984 for stay of recovery of tax for the Assessment Year 2012 - 2013.

AND

IN THE MATTER OF:

Md. Muzammel Hossain, Proprietor of M/s. Muzammel Store, of Ga-36/4, Maddha Badda, Dhaka.

..... **Applicant-Petitioner.**

-Versus -

The Additional Assistant Commissioner of Taxes, Circle-171, Tax Zone -8, Dhaka.

..... **Respondent-Opposite Party.**

To

Mr. Justice Syed Mahmud Hossain, the Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition of the petitioner above-named most respectfully—

S H E W E T H:

1. That the petitioner is a lower earning citizen of our country. He is law abiding and peace loving. Few years ago he had a small store which is closed now. Now he along with his entire family is depending on income arising from house rent.
2. That the applicant filed his Return of Income for the Assessment Year 2012-2013 showing total income amounting Tk. 3,00,000/-, against which the Additional Assistant Commissioner of Taxes raised objection and assessed tax afresh. In the final assessment under section 82BB(1)/82BB(3)/83(2) of the Income Tax Ordinance, 1984 (*henceforth referred to as the ITO*), the Additional Assistant Commissioner of Taxes determined total income as Tk. 33,72,652/-vide order dated 10.09.2014. In calculating the total taxable income the Additional Assistant Commissioner of Taxes very arbitrarily and illegally disallowed several compulsory expenses in daily life and business. The Additional Assistant Commissioner of Taxes more arbitrarily disallowed the return of the applicant. In doing so the respondent highly failed to consider that the income and expenses showed in

the relevant income year do not show any inconsistency or anomaly. The current return was absolutely in harmony with the returned a submitted by the applicant.

3. That being aggrieved by and dissatisfied with the aforesaid order the applicant filed appeal before the Joint Commissioner of Taxes (Appeal), Appellate Range-3, Tax Appeal Zone-1, Dhaka who after hearing both the parties and perusing the documents allowed the appeal in part vide order dated 30.07.2015. On the basis of said order the Additional Assistant Commissioner of Taxes issued demand notice on 20.08.2015. The Commissioner of Appeal also uphold those as disallowed by the Additional Assistant Commissioner of Taxes to a significant extent except a few.
4. That thereafter, being aggrieved and dissatisfied with the aforesaid order, the applicant filed an appeal being I.T.A. No. 2717 of 2015-2016 and before the Taxes Appellate Tribunal, Division Bench-3, Dhaka, who after hearing the parties and perusing the documents disallowed the appeal vide order dated 31.01.2016. On the basis of the said order of Tribunal, the Additional Assistant Commissioner of Taxes calculated tax on 3.03.2016 and subsequently issued demand notice on the same date.
5. That it is stated that the Tribunal, CT(A) and ACT did not consider the expenses in according to the real accounts and actual expenses as incurred by the applicant, and did not consider the actual cost which was in consistent and coherent in line of earlier years and tax returns. The real expenses which were not whimsically, arbitrarily and unreasonably considered by the ACT were the actual cost of the applicant and the same cannot be considered as income for the purpose of calculation of tax. As such, the impugned orders are liable to be set aside for ends of justice.
6. That it is submitted that on the fact and circumstances of the case, the Taxes Appellate Tribunal under section 159(2)/30A/83(2) of the Income Tax Ordinance was not legally justified to disallow the real expenses of the applicant along with loan repayment and family expenses and the income from rent and thereby imposing/calculating GP @ 15% thereto without assigning any cogent reason or factual basis.
7. That it is submitted that on the facts and circumstances of the case the tribunal was not justified in disallowing several obvious expenses of the applicant without checking the reality and field inspection and also without any cogent reason and factual & legal basis.
8. That it is stated that on the basis of the said final order of tribunal, the ACT issued demand notice on 3.03.2016. Photocopy of the demand notice dated 3.03.2016 is annexed hereto and marked as **Annexure- "X"**.
9. That as per final assessment the tax stands at Tk. 7,10,487/= out of which total net tax is Tk. 6,02,073/=, and interest is Tk. 1,18,414/=. The applicant paid tax amounting Tk. 10,000/= at the time of submitting return, subsequently for filing appeal Tk. 40,000/= and now Tk. 58,811/=, in total Tk. 1,08,811/= for filling this reference application. Copies of the challans are annexed hereto and marked as **Annexure- "X-1" Series.**
10. That if, under the said circumstances, an order staying recovery or collection of the aforesaid impugned income tax demand at Tk. 5,92,073/= and interest Tk. 1,18,414/=, in total Tk. 7,10,487/= dated 3.03.2016 is not passed by their Lordships pending hearing and disposal of the case on merit, the very purpose of the Reference Application under section 160(1) of the Ordinance will be of no avail causing serious loss and injury to the applicant company.

11. That the petitioner humbly craves the leave of this Hon'ble Court for producing the photocopy of Annexures "X-1" Series, original of which lying with the office of the respondent. The learned Advocate for the applicant undertakes the authenticity of the photocopies of Annexures.

WHEREFORE, it is most humbly prayed that Your Lordships may graciously be pleased to issue a Rule calling upon the respondent to show cause as to why the proceedings of recovery of demand Tk. 5,92,073/= and interest Tk. 1,18,414/=, in total Tk. 7,10,487/= issued by the respondent (Annexure "X") should not be stayed till disposal of the Reference Application, and after hearing the parties and perusing the cause shown, if any, make the Rule absolute and/or pass such other or further order or orders as to your Lordships may deem fit and proper.

And for this act kindness, the applicant as in duty bound shall ever pray.

A F F I D A V I T

I, Md. Muzammel Hossain, son of Abdul Mannan Howlader and Naichatan Bibi, proprietor of M/s. Muzammel Store, of Ga-36/4, Maddha Badda, Dhaka, House No. 06, Road- Lowher Tec, Post Office- Gulshan-1212, Badda, Dhaka, by profession- Business, aged about- 58 years, by faith Muslim, by nationality Bangladeshi, National ID No. 7330088563 do hereby solemnly affirm and say as follows :—

01. That I am the Proprietor of the applicant in this case and well-conversant with the facts of this case and competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

APPLICATION FOR REVISION U/S. 121A OF THE INCOME TAX ORDINANCE, 1984

BEFORE THE COMMISSIONER OF TAXES, TAXES ZONE-15, DHAKA.

1. Applicant : Swadesh Telecom Limited, SAM Tower, Plot # 04, Road # 22, Gulshan # 1, Dhaka-1212, represented by its Managing Director.
2. Assessment Year : 2018-2019 (One year).
3. Deputy Commissioner of Taxes passing the order : The Deputy Commissioner of Taxes, Tax Circle- 310 (Companies), Taxes Zone- 15, Dhaka.
4. Date of communication of DCT's order : 20.06.2019.
5. Relief Claimed : As per Grounds of Revision.

Sir,

The above named applicant company bearing TIN- 396792369300 begs to file this revision application under Section 121A of the Income Tax Ordinance (ITO), 1984 relating to the assessment year 2018-2019 (from 1.07.2017 to 30.06.2018) against the assessment order u/s. 82C/83(2) passed by the Deputy Commissioner of Taxes, Circle- 310(Co.), Taxes Zone- 15, Dhaka, waiving the right to appeal under the Income Tax Ordinance, 1984.

The applicant company engaged in the business of telecommunication by obtaining license from the Bangladesh Telecommunication Regulatory Commission as “International Gateway (IGW) Services” and the said services are treated as “export” under the Imports and Exports (Control) Act, 1950 read with Export Policy, 2018 and as “deem to be export” as per provision of section 3(2) read with section 3(kha)(Au) of the Value Added Tax Act, 1991. And as such at the instance of Ministry of Finance, Government of Bangladesh, published a SRO No. 125-Law/2010/543-Musuk dated 26.04.2010 giving exemption from payment of VAT regarding the said service. The applicant company being provider of said service is exempted from payment of VAT as per the said SRO and the assessing authority namely the Deputy Commissioner of Taxes, Circle-310(Co.), Taxes Zone-15, Dhaka had not disputed the said position. The applicant company while filling return claimed exemption of 50% of its total income of Tk. 21,46,78,180/- under the Income Tax Ordinance (ITO), 1984. The applicant company filed return of income on 27.02.2019 showing total income Tk. 21,80,76,713/- the sources of income of the company is (i) mainly Income from business (Telecommunication business) and (ii) capital gain income. In respect to the notice issued under Section 83(1) and 79 of the Ordinance, the representative of the Company appeared before the DCT at the time of hearing and explained the return by submitting necessary documents and claimed exemption of 50% from its total income of Tk.21,46,78,180/- as tax free under the heading “Income from business”. But the DCT disallowed the same and made assessment counting total income Tk.21,92,94,228/- and thus imposed additional Tk.46,16,048/-

(Tk.21,92,94,228/- - Tk.21,46,78,180/-) without allowing exemption of 50% of the said total income. It is stated that the applicant company was not given exemption of tax or reduction in rate of tax by the DCT under the said notification made under the Income Tax Ordinance, 1984. Being aggrieved with the said order, the applicant company seeks to file this revisional petition under section 121A of the Income Tax Ordinance, 1984 on the following amongst other grounds-

GROUND'S OF REVISION

Ground No. 1:

That the Deputy Commissioner of Taxes while computing total income from business at Tk. 21,92,94,228/- purportedly failed to allow exemption of 50% (amounting to Tk.10,96,47,114/-) of the said income as the applicant company's income from business is mainly income from business of export namely International Gateway (IGW) having license from the Bangladesh Telecommunication Regulatory Commission (BTRC), under section 44(1) and paragraph 28 of 6th Schedule Part-A of the ITO, 1984 in light of the Imports and Exports (Control) Act, 1950 read with Export Policy, 2018 read with the Value Added Tax Act, 1991 and SRO 125-Law/2010/543-Musuk, dated 26.04.2010 declaring the service providing by the applicant company as “রপ্তানীকৃত বলিয়া গণ্য”.

Ground No. 2:

That the Learned Deputy Commissioner of Taxes while computing total income from business at Tk.21,92,94,228/- purportedly failed to allow exemption of 50% of the said total income without providing any reason and in total non-application of mind as explanation given under paragraph 28 of 6th Schedule Part-A is only for inclusion of additional item to be included in the definition of “business of export” but the applicant company's business of export being deem export having recognize under the Value Added Tax Act, 1991 read with SRO 125, dated 26.04.2010 and hence very much covered under term “derived from the business of export” under the said paragraph 28 of 6th Schedule, Part-A of the ITO, 1984.

Ground No. 3:

That the Learned Deputy Commissioner of Taxes failed to appreciate the legal position that there is no definition of “business of export” under the ITO, 1984 and there is no provision expressly prohibiting the application of provisions of other applicable Laws like the Value Added Tax Act rather adopted the said law in several provisions and so the applicant's income is definitely from the business of export.

Ground No. 4:

The similar kind of order and income tax assessment without giving the said 50% exemption to another company namely Digicon Telecommunication Ltd carrying out similar type of business has already been challenged and stayed in Writ Petition No. 14854 of 2017. Under the circumstances, you should not make demand without giving 50% exemption under paragraph 28 of 6th schedule Part-A of the ITO, 1984. That the applicant reserved the right to amend, include or modify any other grounds not mentioned hereinabove but bear out of the facts and from the records and evidences at the time of hearing.

Waiver of right to make appeal before the appellate authorities:

We confirmed that we have not filed any appeal or shall not file any appeal before the appellate authority in respect of subject order, since we are submitting Review Application for the year in question.

Wherefore, it is humble prayed to pass an order allowing this revisional application under section 121A of the ITO, 1984 directing the Deputy Commissioner of Taxes, Circle- 310(Co.), to allow exemption of 50% from the total income of Tk. 21,92,94,228/- under head of income from the business of export and thereby to impose tax at applicable rate only on 50% (amounting to Tk.10,96,47,114/-) of the total income of the said head by setting aside the order of the Deputy Commissioner of Taxes as made in respect of assessment year 2018-2019 (One year).

Verified

The statements made above are true to my best knowledge and belief.

Managing Director
Swadesh Telecom Ltd.

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. _____ OF 2019

IN THE MATTER OF :

An application under Article 102(2) of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF :

Swadesh Telecom Limited, SAAM Tower, Plot # 08, Road # 22, Gulshan # 1, Dhaka-1212, represented by its Company Secretary.

... .. **Petitioner.**

– V E R S U S –

1. National Board of Revenue, represented by it's Chairman, of NBR Bhaban, Segunbagicha, Dhaka.
2. The Commissioner of Taxes, Tax Zone- 15, Dhaka.
3. The Deputy Commissioner of Taxes, Tax Circle- 310 (Companies), Taxes Zone- 15, Dhaka.

..... **Respondents.**

AND**IN THE MATTER OF :**

Nathi No. ১এ-রিভিউ/সা-৩১০/আঃ বিঃ/ কঃ অঃ-১৫/২০১৯-২০২০/৬৬০ dated 08.08.2019 passed by the respondent No. 2 rejecting revisional application filed under section 121A of the Income Tax Ordinance, 1984 and thereby upholding the assessment order passed by the respondent No. 3 in respect of the assessment year 2018-2019 (Annexure- "D Series" and "F" respectively).

AND**IN THE MATTER OF :**

Direction upon the respondents to make revised assessment orders giving exemption of 50% of the income derived from the business of export under paragraph 28 of 6th scheduled part a read with section 44(1) of the Income Tax Ordinance, 1984.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most respectfully—

S H E W E T H :-

1. That the petitioner is a private limited company duly registered with the Registrar of Joint Stock Companies (RJSC). The Petitioner engaged in the business of telecommunication by obtaining licence from the Bangladesh Telecommunication Regulatory Commission as "International Gateway (IGW) Services and the said services are treated "deem export" as per provision of section 3(2) read with section 3(Ba) of the Value Added Tax Act, 1991. The application was allowed any exemption or there was any reduction in rate of tax by any notification made under the Income Tax Ordinance. The petitioner is a regular tax payer of the country. Photocopy of the Income Tax certificate is annexed hereto and marked as **Annexure- "A"**.

2. That the respondent No.1 is the National Board of Revenue, represented by it's Chairman, of NBR Bhaban, Segunbagicha, Dhaka, the respondent No. 2 is the Commissioner of Taxes, Tax Zone- 15, Dhaka and the respondent No. 3 is the Deputy Commissioner of Taxes, Tax Circle- 310 (Companies), Taxes Zone- 15, Dhaka.
3. That the addresses of the petitioner and respondents given in the cause title of this application are their correct addresses for the purpose of serving notice(s) upon them.
4. That it is stated that the petitioner company being a regular tax payee, filed return under section 83(2) of the Income Tax Ordinance, for the Assessment Year 2018-2019 showing total income of Tk. 21,92,94,228/- and as such paid tax thereon. Notice under section 79 and 83(1) of the Ordinance were issued and served upon the petitioner. Copy of the return is annexed hereto and marked as **Annexure- "B"**.
5. That the petitioner company engaged in the business of telecommunication by obtaining license from the Bangladesh Telecommunication Regulatory Commission as "International Gateway (IGW) Services" and the said services are treated as "deem to be export" as per provision of section 3(2) read with section 3(kha)(Au) of the Value Added Tax Act, 1991. And as such at the instance of Ministry of Finance, Government of Bangladesh, published a SRO No. 125-Law/2010/543-Musuk dated 26.04.2010 giving exemption from payment of VAT regarding the said service. Photocopy of the SRO dated 26.04.2010 is annexed hereto and marked as **Annexure "C"**.
6. That the petitioner company being provider of said service is exempted from payment of VAT as per the said SRO and the assessing authority namely the Deputy Commissioner of Taxes, Circle- 310(Co.), Taxes Zone-15, Dhaka had not dispute the said position. The applicant company while filling return claimed exemption of 50% of its total income of Tk. 21,46,78,180/- under the Income Tax Ordinance (ITO), 1984. The applicant company filed return of income on 27.02.2019 showing total income Tk. 21,80,76,713/- the sources of income of the company is (i) mainly Income from business (Telecommunication business) and (ii) capital gain income. In respect to the notice issued under Section 83(1) and 79 of the Ordinance, the representative of the Company appeared before the DCT at the time of hearing and explained the return by submitting necessary documents and claimed exemption of 50% from its total income of Tk.21,46,78,180/- as tax free under the heading "Income from business". But the DCT disallowed the same and made assessment counting total income Tk.21,92,94,228/- and thus imposed additional Tk.46,16,048/- (Tk.21,92,94,228/- - Tk.21,46,78,180/-) without allowing exemption of 50% of the said total income. It is stated that the applicant company was not given exemption of tax or reduction in rate of tax by the DCT under the said notification made under the Income Tax Ordinance, 1984. Copies of the tax assessment and demand of the DCT are annexed hereto and marked as **Annexure "D" series**.
7. That the Deputy Commissioner of Taxes while computing total income from business at Tk. 21,92,94,228/- purportedly failed to allow exemption of 50% (amounting to Tk.10,96,47,114/-) of the said income as the applicant company's income from business is mainly income from business of export namely International Gateway (IGW) having license from the Bangladesh Telecommunication Regulatory Commission (BTRC), under section 44(1) and paragraph 28 of 6th Schedule Part-A of the ITO, 1984 in light of the Imports and Exports (Control) Act, 1950 read with Export Policy, 2018 read with the Value Added Tax Act, 1991 and SRO 125-Law/2010/543-Musuk, dated 26.04.2010 declaring the service providing by the applicant company as "রপ্তানীকৃত বলিয়া গণ্য".

8. That it is stated that the Deputy Commissioner of Taxes while computing total income from business at Tk.21,92,94,228/- purportedly failed to allow exemption of 50% of the said total income without providing any reason and in total non-application of mind as explanation given under paragraph 28 of 6th Schedule Part-A is only for inclusion of additional item to be included in the definition of “business of export” but the applicant company’s business of export being deem export having recognize under the Value Added Tax Act, 1991 read with SRO 125, dated 26.04.2010 and hence very much covered under term “derived from the business of export” under the said paragraph 28 of 6th Schedule, Part-A of the ITO, 1984.
9. That it is stated that the Deputy Commissioner of Taxes failed to appreciate the legal position that there is no definition of “business of export” under the ITO, 1984 and there is no provision expressly prohibiting the application of provisions of other applicable Laws like the Value Added Tax Act rather adopted the said law in several provisions and so the applicant’s income is definitely from the business of export.
10. That thereafter the petitioner filed revision application under Section 121A of the Income Tax Ordinance (ITO), 1984 relating to the assessment year 2018-2019 (from 1.07.2018 to 30.06.2019) against the assessment order u/s. 82C/83(2) passed by the Deputy Commissioner of Taxes, Circle- 310(Co.), Taxes Zone- 15, Dhaka, waiving the right to appeal under the Income Tax Ordinance, 1984. Photocopy of the revisions application is annexed hereto and marked as **Annexure “E”**.
11. That upon hearing the revision application the respondent No. 2 rejected the revision and uphold the assessment order of the DCT taking view that এমতাবস্থায়, করদাতা কোম্পানীর ২০১৮-২০১৯ করবর্ষের ৮২সি/৮৩(২) ধারায় নিষ্পত্তিকৃত মামলার রিভিউ আবেদনে উল্লেখিত আপত্তিসমূহের যৌক্তিকতা না থাকায় উপ কর কমিশনার কর্তৃক গৃহীত কার্যক্রম বহাল রাখার নির্দেশ প্রদান করা হলো vide Order dated 8.08.2019; challenging of which the petitioner filed this Writ Petition. Photocopy of the order dated 8.08.2019 is annexed hereto and marked as **Annexure “F”**.
12. That challenging the similar kind of order and income tax assessment without giving the said 50% exemption, another company namely Digicon Telecommunication Ltd carrying out similar type of business filed Writ Petition No. 14854 of 2017 and obtained Rule and stay from the Hon’ble High Court Division vides Order dated 23.10.2017. The Writ Petition is pending for hearing before the Hon’ble Court. Copy of the order dated 23.10.2017 in Writ Petition No. 14854 of 2017 is annexed hereto and marked as **Annexure “G”**.
13. That it is submitted that Income Tax Ordinance, 1984 is an enactment for imposition or realization of income tax. It is not an enactment for classifying or dealing with re-export or deem export as no definition of export or deem export having been provided under this Ordinance, as such whether a particular transaction is export as deem export or not as necessarily be interpreted with applicable legislation like the Customs Act, 1969, Imports and Exports (Control) Act, 1950, Export Policy, 2018 and the Value Added Tax Act, 1991 under which the transaction of export and the classification thereof had been made and dealt with; and therefore the respondent Nos. 2-3 have acted in complete non application of mind in classifying the service of the applicant as export and therefore impugned order as of Annexure- D Series are liable to be declared to have been made without lawful authority and of no legal effect.

14. That it is submitted that under Section 2(c) of the Imports and Exports (Control) Act, 1950 the “import” and “export” means respectively brining into, and taking out of, Bangladesh by sea, land or air. Moreover, under the Export Policy, 2018 the telecommunication business and international gateway services (IGW) are included as export-able services. Therefore, the petitioner under telecommunication business is exporting calls under international gateway services to the foreign countries and also importing calls through foreign carriers into Bangladesh. As such, the petitioner is entitled to get 50% exemption under section 44(1) paragraph 28 of 6th Schedule Part-A of the ITO, 1984, but the respondents failed to apply this point of law in favor of the petitioner. Therefore, the impugned assessment order and revisional order are liable to be declared to have been passed without lawful authority and is of no legal effect.
15. That it is submitted that the Deputy Commissioner of Taxes while computing total income from business at Tk. 21,92,94,228/- purportedly failed to allow exemption of 50% of the said total income as the petitioner’s company’s income from business is mainly income from business of export namely International Gateway (IGW) having license from the Bangladesh Telecommunication Regulatory Commission (BTRC), under section 44(1) and paragraph 28 of 6th Schedule Part-A of the ITO, 1984 read with the Value Added Tax Act, 1991 and SRO 125-Law/2010/543-Musuk, dated 26.04.2010 declaring the service providing by the appellant-company as “রপ্তানীকৃত বলিয়া গণ্য”.
16. That the petitioners crave the leave of the Hon’ble Court to file this writ petition with the photocopies of the annexures, original of which are lying with the petitioner. That the photocopies of the annexures are the true reflection of the original one and the learned Advocate for the petitioners duly attested those papers.
17. That the petitioner being aggrieved by the impugned notice cum demand vides Nathi No. ১৭-রিভিউ/সা-৩১০/আঃ বিঃ/ কঃ অঃ-১৫/২০১৯-২০২০/৬৬০ dated 8.08.2019 passed by the respondent No. 2 rejecting revisional application filed under section 121A of the Income Tax Ordinance, 1984 and thereby upholding the assessment order passed by the respondent No. 3 in respect of the assessment year 2018-2019 (Annexure- “D Series” and “F” respectively) and also finding no other equally efficacious remedy has invoked the writ jurisdiction before the Hon’ble High Court Division under Article 102 of the Constitution, on the following amongst others-

-G R O U N D S-

- I. For that under Section 2(c) of the Imports and Exports (Control) Act, 1950 the “import” and “export” means respectively brining into, and taking out of, Bangladesh by sea, land or air. Moreover, under the Export Policy, 2018 the telecommunication business and international gateway services (IGW) are included as export-able services. Therefore, the petitioner under telecommunication business is exporting calls under international gateway services to the foreign countries and also importing calls through foreign carriers into Bangladesh. As such, the petitioner is entitled to get 50% exemption under section 44(1) paragraph 28 of 6th Schedule Part-A of the ITO, 1984, but the respondents failed to apply this point of law in favor of the petitioner. Therefore, the impugned assessment order and revisional order are liable to be declared to have been passed without lawful authority and is of no legal effect.

- II. For that Income Tax Ordinance, 1984 is an enactment for imposition or realization of income tax. It is not an enactment for classifying or dealing with re-export or deem export as no definition of export or deem export having been provided under this Ordinance, as such whether a particular transaction is export as deem export or not as necessarily be interpreted with applicable legislation like the Customs Act, 1969, Imports and Exports (Control) Act, 1950, Export Policy, 2018 and the Value Added Tax Act, 1991 under which the transaction of export and the classification thereof had been made and dealt with; and therefore the respondent Nos. 2-3 have acted in complete non application of mind in classifying the service of the applicant as export and therefore impugned order as of Annexure- D Series are liable to be declared to have been made without lawful authority and of no legal effect.
- III. For that Income Tax Ordinance, 1984 is an enactment for imposition or realization of income tax. It is not an enactment for classifying or dealing with re-export or deem export as no definition of export or deem export having been provided under this Ordinance, as such whether a particular transaction is export as deem export or not as necessarily be interpreted with applicable legislation like the Customs Act, 1969 and the Value Added Tax Act, 1991 under which the transaction of export and the classification thereof had been made and dealt with; and therefore the respondent Nos. 2-3 have acted in complete non application of mind in classifying the service of the applicant as export/deem export as classified by S.R.O. No. 125-Law/2010/543/Musuk dated 26.04.2010 under the Value Added Tax Act and therefore impugned order as of Annexure- D Series are liable to be declared to have been made without lawful authority.
- IV. For that the Deputy Commissioner of Taxes while computing total income from business at Tk. 21,92,94,228/- purportedly failed to allow exemption of 50% of the said total income as the petitioner's company's income from business is mainly income from business of export namely International Gateway (IGW) having license from the Bangladesh Telecommunication Regulatory Commission (BTRC), under section 44(1) and paragraph 28 of 6th Schedule Part-A of the ITO, 1984, Imports and Exports (Control) Act, 1950, Export Policy, 2018 read with the Value Added Tax Act, 1991 and SRO 125-Law/2010/543-Musuk, dated 26.04.2010 declaring the service providing by the appellant-company as “রপ্তানীকৃত বলিয়া গণ্য”.
- V. For that the Deputy Commissioner of Taxes while computing total income from business at Tk. 21,92,94,228/- purportedly failed to allow exemption of 50% of the said total income without providing any reason and in total non-application of mind as explanation given under paragraph 28 of 6th Schedule Part-A is only for inclusion of additional item to be included in the definition of “business of export” but the petitioner-company's business of export being deem export having recognize under the Value Added Tax Act, 1991 read with SRO 125, dated 26.04.2010 and hence very much covered under term “derived from the business of export” under the said paragraph 28 of 6th Schedule, Part-A of the ITO, 1984.
- VI. For that it is the settled principle of law that the action of the government shall be consistent but under the instant case the respondent No. 2 and 3 being a department of respondent No. 1 shall be stopped by the principle of promissory estoppels ignoring the right of the petitioners to get benefit of the export under section 44(1) read with paragraph

No. 38 of 6th Schedule Part-A read with section 44(1) of the Income Tax Ordinance, 1984 adopting the classification of export or deem export under the Value Added Tax and as such impugned order as of Annexure- D Series are liable to be declared to have been made without lawful authority and of no legal effect.

- VII. For that the petitioner engaged in the business of telecommunication by obtaining licence from the Bangladesh Telecommunication Regulatory Commission as “International Gateway (IGW) Services and the said services are treated “deem export” as per provision of section 3(2) read with section 3(Ba) of the Value Added Tax Act, 1991. And as such at the instance of Ministry of Finance, Government of Bangladesh, published a SRO No. 125-Law/2010/543-Musuk dated 26.04.2010 giving exemption from payment of VAT regarding the said service classifying the said service as deem export. The petitioner being provider of said service is exempted from payment of VAT as per the said S.R.O. and the assessing authority namely the Deputy Commissioner of Taxes, Dhaka had not disputed the said position and as such disallowing the claimed amount under heading “Income from business” and imposed tax on total income of Tk. 21,92,94,228/- excluding 50% of the said total income under the said heading is liable to be declared without lawful authority and of no legal effect.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to :

- (A). To issue Rule *Nisi* calling upon the respondents to show cause as to why the impugned notice vide Nathi No. ১৭-রিভিউ/সা-৩১০/আঃ বিঃ/ কঃ অঃ-১৫/২০১৯-২০২০/৬৬০ dated 8.08.2019 passed by the respondent No. 2 rejecting revisional application filed under section 121A of the Income Tax Ordinance, 1984 and thereby upholding the assessment order passed by the respondent No. 3 in respect of the assessment year 2018-2019 (Annexure- “D Series” and “F” respectively) shall not be declared to have been done illegally, without lawful authority and of no legal effect, and as to why the respondents shall not be directed to make revised assessment orders giving exemption of 50% of the income derived from the business of export under paragraph 28 of 6th scheduled part a read with section 44(1) of the Income Tax Ordinance, 1984 for ends of justice;
- (B). After hearing the parties and perusing the cause shown, if any, make the Rule absolute;
- (C). Pending hearing of the Rule, be further pleased to stay the operation of the impugned Nathi No. ১৭-রিভিউ/সা-৩১০/আঃ বিঃ/ কঃ অঃ-১৫/২০১৯-২০২০/৬৬০ dated 8.08.2019 passed by the respondent No. 2

along with the recovery of excess tax vide assessment order passed by the respondent No. 3 in respect of the assessment year 2018-2019 (Annexure- "D Series" and "F" respectively) for ends of justice.

- (D). Pass such other or further order or orders as to your Lordships may deem fit and proper.

And for this act of kindness, your petitioner as in duty bound shall ever pray.

A F F I D A V I T

I, Monjur Morshed, son of Company Secretary of Swadesh Telecom Limited, SAAM Tower, Plot # 08, Road # 22, Gulshan # 1, Dhaka-1212, permanent address:, age about- years, by faith Muslim, by occupation- Business, by nationality Bangladeshi having National ID No., do hereby solemnly affirm and say as follow:-

01. That I am the company secretary of the petitioner company and being conversant with the facts and circumstances of the case I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Saddam Hossain)
Advocate

Solemnly affirmed before me by
Said deponent at the Supreme
Court premises, Dhaka on
this the.....th day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Saddam Hossain)
Advocate
Membership # 6731
Hall Room No. 2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample**BEFORE THE COMMISSIONER, CUSTOMS, EXCISE AND VAT
COMMISSIONERATE, DHAKA (NORTH), DHAKA.**

VAT APPEAL NO. _____ OF 2019

IN THE MATTER OF:

Appeal against order being final demand notice vide Memo No. ৪/মুসক/পশ্চিমকমিঃ-৮(৫০)ইয়াহাং স্যুজ/মুসক ফাঁকি/বিচার/২০১৯/১৯১৪ তারিখঃ ১৮/০৬/১৯ issued under the signature of the Commissioner, Customs, Excise and VAT Commissionerate, Dhaka (West), Plot No. 2 and 4, Road No. 1, Block- A, (5th -8th Floor), Mirpur-11, Dhaka-1216, upon the appellant under section 55(3) of the Value Added Tax Act, 1991 claiming VAT amounting Tk. 38,76,378/- (Taka Thirty Eight Lac Seventy Six Thousand Three Hundred and Seventy Eight) only along with penalty of 2% interest till realization of the same.

AND**IN THE MATTER OF:**

M/S. Yahang Shoes & Materials (Pvt.) Ltd., of Gorat, Sarker Market, Ashulia, Savar, Dhaka, represented by its authorized director Shah Isarail.

..... **Appellant.****–VERSUS –**

The Commissioner, Customs, Excise and VAT Commissionerate, Dhaka (West), Plot No. 2 and 4, Road No. 1, Block- A, (5th - 8th Floor), Mirpur-11, Dhaka-1216.

..... **Respondent.****The appellant begs to state that–**

1. That the appellant is a private limited company under the laws of Bangladesh, it is a regular tax payer and VAT payer bearing VAT registration no. 171510005159.

2. That the appellant is a law abiding company in our country carrying out very small type of business in a local area. The appellant has always complied with the order and direction of the VAT authority including the respondent. In fact, the appellant is a very small entrepreneur and started business very recently.
3. That on 2.04.2019 the Deputy Commissioner, Customs, Excise and VAT Division, Savar, Dhaka, House No. C/37/1, H.K. Tower, Anandapur, Savar, Dhaka imposed penalty for not submitting Mushok Challans upon the appellant. In compliance with the order the appellant deposited the amount of penalty and also started to submit Mushok Challans including past and on-ward. But thereafter, the respondent very illegally and arbitrarily imposed final demand notice vide Memo No. ৪/মূসক/পশ্চিমঃ-৮(৫০)ইয়াহাং সুজ/মূসক ফাঁকি/বিচার/২০১৯/১৯১৪ তারিখঃ ১৮/০৬/১৯ (*henceforth referred to as 'the impugned order/demand'*) under section 55(3) of the Value Added Tax Act claiming Tk. 38,76,378/- upon the appellant vide a notice dated 18.06.2019; against which the appellant begs to file this appeal on the following grounds amongst others—

GROUND S

- I. For that the allegations made in the final impugned notice under section 55(3) of the Value Added Tax Act, 1991 against the appellant about non submission of VAT challans is not true because the appellant submitted all VAT challans its business in time but the respondent very illegally and malafide imposed the impugned demand/order upon the appellant, which is liable to be set aside.
- II. For that the respondent in the impugned final demand notice did not mention the period of non submission of VAT challans by the appellant, and it did not also mention that how the appellant avoided VAT against which of your income either on daily basis or weekly basis or monthly basis. As such, the impugned demand/order is liable to be set aside for ends of justice.
- III. For that earlier on 2.04.2019 the respondents imposed fine upon the appellant under section 37 of the Value Added Tax Act, 1991 but at that time the respondent did not mention anything about evasion of VAT by the appellant; as such, the impugned order/demand is barred by the principle against double jeopardy and estoppel, and the same is liable to be set aside for ends of justice.
- IV. For that the respondent very illegally and arbitrarily and also without serving any prior any show cause notice visited the office of the appellant and took away all the documents, and did not clearly let the appellant know about the documents or evidences basing on which the impugned final demand notice dated 18.06.2019 was issued upon the appellant, which is violative of the fundamental rights as well as the principle of natural justice of the appellant. As such, the impugned demand/order is liable to be set aside for ends of justice.

- V. For that the respondents acted very arbitrarily while making demand on the basis of documents about which the appellant had no proper knowledge, and those documents were not verified with the true and authentic document of the appellant; as such, the impugned demand/order is liable to be set aside for ends of justice.
- VI. For that the respondents acted malafide and arbitrarily taking view in the impugned notice that the appellant failed to submit any documents at the time of hearing, but the respondents are claim that they have made demand under section 55(3) on the basis of the documents recovered from the office of the appellant, which means that the respondents have acted malafide and unfairly. Hence, the impugned demand made by the respondents has no basis at all. As such, the impugned demand/order is liable to be set aside for ends of justice.
- VII. For that the impugned demand under section 55(3) is absolutely erroneous and bad in law and fact as well. The same was made without any cogent reason and any reliable documentary evidences. As such, the impugned demand/order is liable to be set aside for ends of justice.

Wherefore, it is most humbly prayed that your honour would graciously be pleased to admit this appeal, to call upon the respondent to show cause as to why the impugned demand/order dated 18.06.2019 being memo No. ৪/মূসক/পশ্চিমঃকমিঃ-৮(৫০)ইয়াহাং স্যুজ/মূসক ফাঁকি/বিচার/২০১৯/১৯১৪ passed by the respondent imposing demand of VAT of Tk. 38,76,378/- (Taka Thirty Eight Lac Seventy Six Thousand Three Hundred Seventy Eight) only along with penalty of 2% interest till realization of the same against the appellant should not be set aside for ends of justice;

AND

Pending hearing of the appeal, stay further operation of impugned order dated 18.06.2019 being memo No. ৪/মূসক/পশ্চিমঃকমিঃ-৮(৫০)ইয়াহাং স্যুজ/মূসক ফাঁকি/ বিচার/ ২০১৯/১৯১৪ passed by the respondent and/or pass such other order or further order or orders as to your lordships may deem fit and proper.

And for this act of kindness, your appellant, as in duty bound shall ever pray.

Signature of the Representative

Sample

**Before the Learned Customs, Excise and VAT Appellate Tribunal
Jiban Bima Bhaban (Level 4), 10, Dilkusha C/A, Dhaka.**

C.E.V.T./CASE (CUS) NO. _____ OF 2017.

IN THE MATTER OF

An application under Section 196A of the Customs Act, 1969.

AND**IN THE MATTER OF**

M/S. Shelaidah Dairy, Proprietor Md. Alauddin Ahmed, of 3/3A, East Rampura, Dhaka-1229, Factory Office-Kashimpur- Charikul, Kumarkhali, Kushtia, permanent address: Alauddin Nagar, Alauddin Nagar, Post Charaikul- 7010, Kumarkhali, Kushtia.

..... **Appellant.**

–Versus –

The Commissioner of Customs, Customs House, Chittagong.

..... **Respondent.**

AND**IN THE MATTER OF**

The adjudicating order passed by the respondent by নথি নং- ২৭০/এপি/সেকশন-০৫(এ)/১৬-১৭ signed on 18.04.2017 under Section 156 (1) Table Clause 9(i) and 14 along with Section 181 of the Customs Act, 1969 imposing penalty and fine along with directing to make assessment in the HS Code as determined by the customs authority i.e. imposing excessive customs duty including supplementary duty @ 100% for the goods (Capital Machinery for Dairy Industry: URS Cold Room System) brought/imported by the appellant under Bill of Entry No. C 1314135 dated 10.11.2016 and LC No. 0000108016010254 dated 31.07.2016 opened with the Al-Arafah Islami Bank Ltd, Dilkusha Branch, Dilkusha by changing the declared H.S. Code of the goods from 9406.00.10 to H.S. Code 8415.10.90.

The humble petition of the appellant most respectfully—

S H E W E T H

1. That the appellant is carrying out agro products food business in our country in compliance with all the legal obligations of our country.
2. That the respondent is the Commissioner of Customs, Customs House, Chittagong who passed the impugned order.
3. That addresses of the appellant and respondent given in the cause title are true and correct for the purpose of service of notices, petitions, etc.
4. That the appellant has filed this appeal being aggrieved by and dissatisfied with the adjudicating order passed by the respondent by নথি নং- ২৭০/এপি/সেকশন-০৫(এ)/১৬-১৭ signed on 18.04.2017 under Section 156 (1) Table Clause 9(i) and 14 along with Section 181 of the Customs Act, 1969 imposing penalty and fine along with directing to make assessment in the HS Code as determined by the customs authority i.e. imposing excessive customs duty including supplementary duty @ 100% for the goods (Capital Machinery for Dairy Industry: URS Cold Room System) brought/imported by the appellant under Bill of Entry No. C 1314135 dated 10.11.2016 and LC No. 0000108016010254 dated 31.07.2016 opened with the Al-Arafah Islami Bank Ltd, Dilkusha Branch, Dilkusha by changing the declared H.S. Code of the goods from 9406.00.10 to H.S. Code 8415.10.90. Photocopy of the impugned order is annexed hereto and marked as **Annexure- “A”**.
5. That the appellant for the purpose of importing Capital Machinery for Dairy Industry URS Cold Room System imported the goods in question from ACSYS Solutions SDN BHD, Malaysia as described under H.S. Code No. 9406.00.10, for which the following customs duty is fixed under the First Schedule of Bangladesh Customs Tariff 2016-2017—

Heading	H.S. Code	Description	Statistical Unit	Statutory Rate of Import Duty	Statutory Rate of Export Duty
94.06	9406.00.10	Prefabricated buildings Sandwhich panel with or without cold room facility imported by agro-processing or pharmaceuticals industry.	Kg	1%	Free

6. That for bringing the aforesaid goods the appellant opened LC No. 108016010254 on 31.07.2016 with Al-Arafah Islami Bank Ltd, Dilkusha Branch, Dilkusha, Bangladesh for an amount of USD 52146. Photocopy of the LC dated 31.07.2016 is annexed hereto and marked as **Annexure- “B”**.

7. That the proforma invoice was issued on 13.07.2016 stating the aforesaid LC value and describing the same goods under same H.S. Code. Insurance and VAT Registration were obtained under the same H.S. Code goods. Photocopies of the pro-forma invoice, insurance documents and VAT certificate are annexed hereto and marked as **Annexure- "C Series"**.
8. That thereafter is the packing list, final invoice and bill of lading, the description of goods in question was given in the similar manner as stated above. Photocopies of all those documents are annexed hereto and marked as **Annexure- "D Series"**.
9. Thereafter, the appellant submitted Bill of Entry stating the description of goods in the aforesaid manner. Photocopy of the Bill of Entry submitted by the petitioner is annexed hereto and marked as **Annexure- "E"**.
10. That the customs authority sent the goods for physical examination. The customs authority after examination of the goods changed the H.S. Code of the goods to a new H.S. Code in the following manner under the First Schedule of Bangladesh Customs Tariff 2016-2017—

Heading	H.S. Code	Description	Statistical Unit	Statutory Rate of Import Duty	Statutory Rate of Export Duty
84.15	8415.81.20	Air handling unit & HVAC System imported by VAT registered pharmaceutical industries requiring more than 2,00,000 BTU or equivalent.	Kg	1%	Free

Initially the Customs Authorities themselves determined H.S. Code of same goods of the appellant under a new H.S. Code as stated in the aforesaid table, against which rate of customs duty is 1%, but subsequently the Customs authorities in the same report under Note No. 11 recommended H.S. Code as 8415.10.90 which attracts following duty—

Heading	H.S. Code	Description	Statistical Unit	Statutory Rate of Import Duty	Statutory Rate of Export Duty
84.15	8415.10.90	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated. Other	Kg	25%	Free

In the same report, the customs authority provided two kinds of H.S. Codes for the same products. Photocopy of the report is annexed hereto and marked as **Annexure- “F”**.

11. That in the aforesaid report, the customs authority recommended to release the goods by assessing customs duty under H.S. Code 9406.00.10 as given by the appellant and the exporter on the following conditions—

- ক) বর্নিত এলসি নং- 108016010254 DT. 31/07/2016 এবং প্রোফরমা ইনভয়েস নং- PI160531-HCPD-R1 DT. 13/07/2016 এর পণ্য গুলিকে এইচ এস কোড ৯৪০৬.০০.১০ তে শ্রেণীবিন্যাস পূর্বক প্রযোজ্য শুল্ক নগদে আদায় সাপেক্ষে রেয়াতীহারে সাময়িকভাবে শুল্কায়ন করা যেতে পারে।
- খ) আলোচ্য এলসি ও প্রোফরমা ইনভয়েস এর আওতায় আমদানিকৃত সকল পণ্যের সমন্বয়ে Capital Machinery চালানটি যথাযথ স্থানে স্থাপিত হবে এ মর্মে পণ্য চালানটি খালাসের ১৮০ (একশত আশি) দিনের মধ্যে বাংলাদেশ প্রকৌশল বিশ্ববিদ্যালয় (বুয়েট), ঢাকা এর বিশেষজ্ঞগণ সরেজমিনে তদন্ত পূর্বক প্রতিবেদন দাখিল করা হবে মর্মে আমদানিকারক নিজ উদ্যোগে ও খরচে অত্র দপ্তরে দাখিলের ব্যবস্থা গ্রহণ করবেন।
- গ) যন্ত্রকৌশল বিভাগ, বাংলাদেশ প্রকৌশল বিশ্ববিদ্যালয় (বুয়েট), ঢাকা এর বিশেষজ্ঞ শিল্প কারখানায় পরিদর্শনকালে আমদানিকৃত যন্ত্রপাতি ও যন্ত্রাংশের মধ্যে BRAND NEW URS COLD ROOM SYSTEM এর অবিচ্ছেদ্য অংশ বা Integrl Part নয় মর্মে যদি কোন পণ্যের বিষয়ে ভিন্ন মতামত পোষণ করেন সেই সকল পণ্য স্ব-স্ব এইচ এস কোড ও শ্রেণীবিন্যাস পূর্বক প্রযোজ্য শুল্ক করাদি পরিশোধ করতে বাধ্য থাকবেন মর্মে আমদানিকারক ৩০০ (তিনশত) টাকা নন-জুডিশিয়াল স্ট্যাম্পে একটি অঙ্গীকারনামা দাখিল করেছেন, সদয় দেখা যেতে পারে। অঙ্গীকারনামাটি গ্রহণ করত: আলোচ্য পণ্য চালানটি প্রযোজ্য শুল্ক করাদি আদায় সাপেক্ষে রেয়াতী হারে সাময়িকভাবে শুল্কায়ন করে পণ্য চালানটি ছাড় দেওয়া যেতে পারে।
- ঘ) যন্ত্রকৌশল বিভাগ, বাংলাদেশ প্রকৌশল ও প্রযুক্তি বিশ্ববিদ্যালয় (বুয়েট), ঢাকা এর বিশেষজ্ঞ প্রতিবেদন প্রাপ্তি সাপেক্ষে আলোচ্য পণ্য চালানটি চূড়ান্ত শুল্কায়নযোগ্য হবে এবং অঙ্গীকারনামাটি ফেরত প্রদান করা হবে।

12. That in compliance with the aforesaid conditions, the appellant executed an Affidavit on 16.11.2016, which was also accepted by the customs authority. Photocopy of the affidavit dated 16.11.2016 is annexed hereto and marked as **Annexure- “G”**.

13. That under the aforesaid circumstances, the Revenue Officer and the Assistant Revenue Officer, Customs Sector- 5 (A), Customs House, Chittagong very illegally and arbitrarily without releasing the goods as per the aforesaid recommendations and affidavit made assessment of customs duty fixing H.S. Code 8415.10.90 which attracts maximum customs duty by finalising Bill of Entry No. C 1314135 dated 10.11.2016 and Assessment Reference 19.04.2017 A 514748. Photocopies of Bill of Entry and Assessment Notice are annexed hereto and marked as **Annexure- “H” & “H-1”**.

14. That under the circumstances, when the matter was sent to the respondent no. 1 who passed the adjudicating order on 18.04.2017 under Section 156 (1) Table Clause 9(i) and 14 along with Section 181 of the Customs Act, 1969 imposing penalty and fine along directing to make assessment in the HS Code as determined by the customs authority i.e. imposing excessive customs duty including supplementary duty @ 100% for the goods (Capital Machinery for Dairy Industry: URS Cold Room System) brought/imported by the appellant

under Bill of Entry No. C 1314135 dated 10.11.2016 and LC No. 0000108016010254 dated 31.07.2016 opened with the Al-Arafah Islami Bank Ltd, Dilkusha Branch, Dilkusha by changing the declared H.S. Code of the goods from 9406.00.10 to H.S. Code 8415.10.90. Being aggrieved by and dissatisfied with the order, the appellant has filed this appeal.

15. That it is stated that the catalogue copies of the goods in question were submitted by the appellant to the respondent for proving that the goods are having absolute similarities with the goods declared in all the documents as stated earlier. Photocopy of catalogue is annexed hereto and marked as **Annexure- "I"**.
16. That, moreover, under the SRO No. 08.01.000.53.03.020.15/57 dated 4.02.2016, the customs authority can release the goods on the given H.S. Code. And any parts of capital machinery if imported under different invoices cannot be treated separately by the customs authority, and all parts shall be treated as capital machinery. Photocopies of the SRO dated 4.02.2016 is annexed hereto and marked as **Annexure- "J"**.
17. That the petitioner is carrying out business of agricultural food products and it obtained trade license for doing the aforesaid business. Photocopy of the trade license is annexed hereto and marked as **Annexure- "K"**.
18. That it is stated that impugned order was passed on 18.04.2017 by the respondent no. 1 and the assessment was made on 10.11.2016; against which the appellant on 27.04.2017 filed a Writ Petition No. 6078 of 2017. After hearing the petitioner and perusing the documents, the Hon'ble High Court Division was pleased to issue Rule Nisi and direct the respondents to release the goods making assessment on the HS Code as given by the appellant vides Order dated 3.05.2017; against which the respondents filed Civil Petition for Leave to Appeal No. 2306 of 2017 and obtained Stay of the Order of the High Court Division. Subsequently, the appellant non-prosecuted (withdrew) the said Writ Petition on 1.08.2017. All these reasons causes delay in filing this appeal, and the delay may kindly be condoned for ends of justice. A print copy of the history of the said writ petition is annexed hereto and marked as **Annexure "L"**.
19. Under the aforesaid circumstances, the appellate being aggrieved by and dissatisfied with the impugned adjudicating order passed by the respondent filed this appeal on the following reasons amongst others—

- REASONS -

- I. For that the respondent changed the H.S. Code from 9406.00.10 (*which is for category Sand which panel with or without cold room facility imported by agro-processing or pharmaceuticals industry under head of pre-fabricated Buildings*) to H.S. Code 8415.10.90 (*which is for category "others" under the Head of Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity*). The customs authority changed the H.S. Code only for recovering more money from the appellant. But the way the customs authority changed the H.S. Code and imposed customs duty, it

imposes more amount than the real value of the goods in question. As such, the impugned adjudicating order along with the assessment made by the respondents is liable to be set aside.

- II. For that the customs authorities themselves recommended for releasing the goods by making customs assessment under H.S. Code 9406.00.10. In compliance with the terms and conditions, the appellant executed affidavit on 16.11.2016 but the customs authority did not release the goods. Moreover, they determined 2 (two) different H.S. Code for the same goods as 8415.81.20 (*attracting customs duty @ 1%*) and 8415.10.90 (*attracting customs duty @ 25%*). Finally they issued Bill of Entry and Assessment Notice under H.S. Code No. 8415.10.90 which attracts more customs duty than H.S. Code 8415.81.20. As such, the impugned adjudicating order along with the assessment made by the respondents is liable to be set aside.
- III. For that the appellant imported/brought the capital machineries for cold room of its dairy firm under 2 (two) LC, one being the instant LC and other is under another LC which has not been sent to customs assessment yet. Under the said SRO, the customs authorities are under obligations to treat the capital machinery and its all parts as “integral” and they can release all the goods under the given H.S. Code by the exporter; but the customs authority are not releasing the goods in question in violation of the statutory obligation under the said SRO and section 81 of the Customs Act, 1969. As such, the impugned adjudicating order along with the assessment made by the respondent is liable to be set aside.
- IV. For that the customs authority imposed customs duty @ 25% and supplementary duty @ 100% along with other charges without having any legal basis or relevant provision of law. As such, the impugned adjudicating order along with the assessment made by the respondents is liable to be set aside.
- V. For that the customs duties along with supplementary and others charges including duties, penalties, fines and demurrages now more than the actual price/LC value of the goods in question. This is causing terrible burden upon the appellate. The entire business of the appellate is facing tremendous loss and at the same time the Government is also counting loss. In both ways, it is causing loss to the appellate and the Government.
- VI. For that the releasing of the goods in question under the given H.S. Code of the appellant will not cause any revenue loss to the government because even after releasing the goods, the customs authority can later on impose any duty basing on any report given by the BUET. On the other hand, the appellant is suffering huge loss and damage due to restraintment of the goods in the port without any reason. The goods are very imminent for building the cold room for keeping the food products of the petitioner healthy and good. But the customs authority without understanding the necessity of the appellant are not releasing the goods which is causing huge loss and damage to the petitioner. Moreover, keeping the goods idle and lying at the port is causing revenue loss to the government as well. As such, the goods in question may kindly be released by making assessment and taking customs duty on the given H.S. Code by the appellant.

WHEREFORE, it is humbly prayed that Your Honor would be graciously pleased :

- A. To admit this appeal and call for the records;
- B. Issue usual notices upon the parties;
- C. After hearing the parties and perusing the documents, allow this Appeal by setting aside the impugned adjudicating order passed by the respondent by নথি নং- ২৭০/এপি/সেকশন-০৫(এ)/১৬-১৭ signed on 18.04.2017 under Section 156 (1) Table Clause 9(i) and 14 along with Section 181 of the Customs Act, 1969 imposing penalty and fine along with directing to make assessment in the HS Code as determined by the customs authority i.e. imposing excessive customs duty including supplementary duty @ 100% for the goods (Capital Machinery for Dairy Industry: URS Cold Room System) brought/imported by the appellant under Bill of Entry No. C 1314135 dated 10.11.2016 and LC No. 0000108016010254 dated 31.07.2016 opened with the Al-Arafah Islami Bank Ltd, Dilkusha Branch, Dilkusha by changing the declared H.S. Code of the goods from 9406.00.10 to H.S. Code 8415.10.90 and direct the respondents to release the goods of the appellant imported/brought under Bill of Entry No. C 1314135 dated 10.11.2016 and LC No. 0000108016010254 dated 31.07.2016 opened with the Al-Arafah Islami Bank Ltd, Dilkusha Branch, Dilkusha by making assessment and taking customs duty as per declared H.S. Code 9406.00.10 of the said goods (Capital Machinery for Dairy Industry: URS Cold Room System) for ends of justice;
- D. Pending hearing of the appeal, be pleased to stay the impugned adjudicating order passed by the respondent by নথি নং- ২৭০/এপি/সেকশন-০৫(এ)/১৬-১৭ signed on 18.04.2017 and direct the concerned customs authority to release the goods of the appellant imported/brought under Bill of Entry No. C 1314135 dated 10.11.2016 and LC No. 0000108016010254 dated 31.07.2016 opened with the Al-Arafah Islami Bank Ltd, Dilkusha Branch,

Dilkusha by making assessment and taking customs duty as per declared H.S. Code 9406.00.10 of the said goods (Capital Machinery for Dairy Industry: URS Cold Room System) for ends of justice;

- E. And/or pass such other order/orders for securing further relief/reliefs as your Lordships deem fit and proper.

And for this act kindness, the appellant as in duty bound shall ever pray.

Verification

Whatever have been stated in this plaint are true to the best of my knowledge and belief and I sing this verification today theday of.....2017, atA.M. in the chamber of my Advocate, at Dhaka.

Signature of the Deponent

Signature of the Advocate

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY APPELLATE JURISDICTION)

VAT APPEAL NO. 22 OF 2017

IN THE MATTER OF:

An Appeal under Section 42(1)(C) of the Value Added Tax Act, 1991.

AND

IN THE MATTER:

The Value Added Tax Act, 1991 (“the Act”) and the Value Added Tax Rules, 1991 (“the Rules”).

AND**IN THE MATTER:**

Tasnim Chemical Complex Limited, having its office at Fresh Villa, House No.15, Road No.34, Gulshan-1, Dhaka-1212, represented by its Managing Director.

..... **APPELLANT.**

-VERSUS-

1. The President, Customs, Excise and VAT Appeal Tribunal, 4th Floor, Jibon Bima Bhaban, 10 Dilkusha C/A Police Station Motijheel, Dhaka.
2. Commissioner, Customs Excise and VAT Commissionerate, Dhaka (East), Nation Sports Council (N.S.C. Tower), 18th Floor, 62/3 Purana Paltan, Dhaka, Dhaka-1000.
3. The Assistant Commissioner, Customs Excise and VAT Commissionerate, Dhaka (East), Nation Sports Council (N.S.C. Tower), 18th Floor, 62/3 Purana Paltan, Dhaka, Dhaka-1000.
4. The Divisional Officer, Customs Excise and VAT, Sonargaon Division, Jamir Khan Complex (3rd Floor), Kanchpur Bus Stand, Kanchur, Sonargaon, Narayangonj.

..... **RESPONDENTS.**

AND**IN THE MATTER:**

Order bearing Memo No. CEVT/Case (VAT)-35/2015 dated 18.05.2017 passed by a Member (Technical) of the respondent No.1 on reference of the different Order dated 03.05.2017 passed by another Member (Technical) of the respondent No.1 on reference (under Section 196C(5) of the Customs Act, 1969) arising from dissenting orders dated 12.04.2017 and 13.04.2017 passed by the members of the respondent No.1, one affirming and the other setting aside the order bearing Memo No. 4(6)/ Daa:Purbo KMi:/Musok(28)-Basto:/Mulyo Anu:/Tasnim Chemical/2014/22(3) dated 01.02.2015 passed by the respondent No.2, Customs Excise & VAT Commissionerate partially revising the order dated 01.12.2014 passed by the respondent No.4-Divisional VAT office purportedly increasing the value addition of the goods manufactured by the appellant for which price was declared.

To

Mr. Justice Surendra Kumar Sinha, the Hon'ble Chief Justice of Bangladesh and his companion Justices of said Hon'ble Court.

The humble petition on behalf of the appellant named
above most respectfully—

S H E W E T H:

1. This appeal is directed against the Order bearing Memo No. CEVT/Case (VAT)-35/2015 dated 18.05.2017 passed by a Member (Technical) of the respondent No.1 on reference of the different Order dated 03.05.2017 passed by another Member (Technical) of the respondent No.1 on reference (under Section 196C(5) of the Customs Act, 1969) arising from dissenting orders dated 12.04.2017 and 13.04.2017 passed by the members of the respondent No.1, one affirming and the other setting aside the order bearing Memo No. 4(6)/ Daa:Purbo KMi:/Musok(28)-Basto:/Mulyo Anu:/ Tasnim Chemical/2014/22(3) dated 01.02.2015 passed by the respondent No.2, Customs Excise & VAT Commissionerate partially revising the order dated 01.12.2014 passed by the respondent No.4-Divisional VAT office purportedly increasing the value addition of the goods manufactured by the appellant for which price was declared by the appellant.
2. That the appellant is a limited company incorporated under the Companies Act, 1994 and is engaged in the business of manufacturing different types of chemical products including inter alia, Caustic Soda (Flux), Caustic Soda (Liquid), Hydrogen peroxide, Chlorinated paraffin Wax etc in its factory located in Meghnaghat, Sonargaon, Narayanganj and marketing and selling the same in the local market. The address of appellant is stated in the cause title.
3. That the respondent No.1 is the President, Customs, Excise and VAT Appeal Tribunal; the respondent No.2 is the Commissioner, Customs Excise and VAT Commissionerate, Dhaka (East); the respondent No. 3 is the Assistant Commissioner, Customs Excise and VAT Commissionerate, Dhaka (East); the respondent No.4 is the Divisional Officer, Customs Excise and VAT Commissionerate, Dhaka (East). The addresses of the respondents are stated in the cause title.
4. That at the outset and before narrating the facts in the context of which this appeal has been preferred, it is stated Rule 3(3) of the VAT Rules, 1991 deals with situations where the relevant VAT officials disagree with the price declaration made by a manufacturer for the purpose of assessment of VAT. Rule 3(3) of the 1991 Rules reads as follows:
 “(৩) উপ-বিধি (১) বা (২) বা বিধি ৩খ অনুযায়ী ঘোষিত মূল্যভিত্তির বিষয়ে পরবর্তী সময়ে বিভাগীয় কর্মকর্তা, সার্কেল রাজস্ব কর্মকর্তা, অথবা কমিশনারের নিকট হইতে ক্ষমতাপ্রাপ্ত অন্যকোনো মূল্য সংযোজন কর কর্মকর্তা কর্তৃক এতদুদ্দেশ্যে পরিচালিত তদন্তে বা বাজার জরীপে অথবা সার্কেল, বিভাগ বা কমিশনারের দপ্তরে রক্ষিত অভিন্ন বা অনুরূপ বা সমজাতীয় পণ্যের মূল্য-সংযোজনের পরিমাণ ও বিভাজন, প্রতিষ্ঠানের প্রকৃত ব্যয়, ঘোষিত মূল্য, অনুমোদিত মূল্য বা বাজার মূল্য সংক্রান্ত তথ্য উপাত্তের ভিত্তিতে পরিচালিত তদন্তে বা জরীপে, প্রাপ্ত তথ্যের ভিত্তিতে যদি প্রতীয়মান হয়ে যে,
 (ক) পণ্যের ঘোষিত মূল্যভিত্তি আইনের ধারা ৫ এর সহিত অসংগতিপূর্ণ, বা

- (খ) একই অধিক্ষেত্র বা অন্যকোনো অধিক্ষেত্রের অনুরূপ প্রকৃতি ও গুণগতমানের পণ্যের মূল্যভিত্তির তুলনায় ঘোষিত মূল্যভিত্তি উল্লেখযোগ্য পরিমাণে কম, বা
- (গ) ফরম “মূসক-১” বা, ক্ষেত্রমত, “মূসক-১খ” এ প্রদর্শিত মূল্য সংযোজনের পরিমাণ উল্লেখযোগ্য ভাবে কম, বা
- (ঘ) পণ্যের সরবরাহকারী ও সরবরাহ গ্রহীতার মধ্যে বিদ্যমান কোনো সম্পর্কের কারণে বা তাহাদের পারস্পরিক বা যে কোনো এক পক্ষের আর্থিক সুবিধা লাভের উদ্দেশ্যে ঘোষিত মূল্যভিত্তি উল্লেখযোগ্যভাবে কম,

এবং সেই কারণে মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্ক কম পরিশোধিত হইয়াছে বা হইতে পারে, তাহা হইলে বিভাগীয় কর্মকর্তা, নিবন্ধিত ব্যক্তিকে যুক্তিসঙ্গত শুল্কানীর সুযোগ প্রদান করার পর, উক্তরূপে সংগৃহীত বা প্রাপ্ত তথ্যের ভিত্তিতে যুক্তিসঙ্গত মূল্যভিত্তি নির্ধারণ করিতে পারিবেন এবং ঘোষণার তারিখ হইতে উক্ত মূল্যভিত্তি অনুযায়ী সংশ্লিষ্ট সকল কর-মেয়াদে প্রদেয় কর নিরূপণ ও পরিশোধযোগ্য হইবে।

The above provision allows the relevant VAT Officials to conduct market survey or investigation on the basis of stored information about value addition, actual expenditure and declared value of identical or similar goods and to fix the base value of the goods on the above basis only after affording an opportunity to hearing to the assessee/ manufacturer.

5. That the appellant, in course of its business, imported the raw materials for manufacturing the Caustic Soda (Flux), Caustic Soda (Liquid), Hydrogen peroxide, Chlorinated paraffin Wax (‘the products’) upon payment of all the applicable duties and taxes thereon. Upon manufacturing the aforesaid chemicals in its factory, the appellant would sell the same in the local market to meet the needs of the local mass upon payment of all the applicable duties and taxes.
6. That on 13.11.2014 the appellant submitted a number of price declaration under Rule 3(3) of the VAT Rules 1991 (‘the 1991 Rules’) by filing the completed Musok-1 Form to the respondent No.4-Divisional Officer for the purpose of approval of the price in order to make assessment of the VAT since there has been some change in the mode of delivery of the products.
7. That the respondent No.4-Divisional VAT Officer, upon receipt of the aforesaid price declarations (i.e. Musok-1 Forms) passed its order dated 01.12.2014 arbitrarily increasing the net profit per units of the products and as such the total value addition were increased for the purpose of the assessment of VAT to an astronomical level in the following manner:—

Name of the product	Appellant’s declaration		The respondent No.4’s assessment	
	Net Profit	Total value addition & rate	Net Profit	Total value addition & rate
Caustic Soda Flux	2.50	191.07 (31.63%)	284.75	473.32 78.37%
Caustic Soda (Liquid) Upto 60%	0.02	1.92 (31.57%)	5.55	7.45 122.53%
Hydrogen peroxide Upto 60% (30 Kg jar)	1.50	63.46 29.99%	222.55	284.51 134.49%

Name of the product	Appellant's declaration		The respondent No.4's assessment	
	Net Profit	Total value addition & rate	Net Profit	Total value addition & rate
Hydrogen peroxide Upto 60% (bulk per kg)	0.05	2.12 34.58%	6.33	8.40 137.03%
Chlorinated parafin wax (C.P.W) 45%-50%	75.00	1580.82 14.19%	3471.93	4977.75 44.68%
Chlorinated parafin wax (C.P.W) 51%-60%	65.00	1354.16 13.66%	4523.00	5812.16 59.94%

The respondent No.4 has arbitrarily increased the profit for determining the value addition which amounts to deciding the profit to be made by an assessee and thus increased the base value unreasonably for the purpose of assessment of VAT.

8. That being aggrieved by the order dated 01.12.2014, the appellant by the order dated 01.12.2014, the appellant filed an application under Rule 3(7) of the VAT Rules, 1991 for review before the respondent No.2- Commissioner on 12.01.2015. Upon hearing the appellant, the respondent No.3-Assistant Commissioner was pleased to pass its order dated 01.02.2015 only refixing the base value of Caustic Soda (Flux) at Tk. 1077.25 instead of the declared base value was Tk. 795.00. The respondent No.3 did not interfere with the arbitrary and unreasonable value of the other products fixed by the respondent No.4.
9. That being aggrieved by the order dated 01.02.2015, the appellants preferred an appeal on 16.04.2015 before the respondent No.1- VAT Appellate Tribunal comprising of two Members (i.e. one Judicial Member and one Technical Member). Upon hearing the parties, the two members of the respondent No.1 passed divided orders dated 12.04.2017 and 13.04.2017 (which was only communicated to the appellant after 18.05.2017). Though the Technical member has affirmed the order dated 01.02.2015 passed by the respondent No.3 dismissing the appeal filed by the appellant, the Judicial member has allowed the appeal filed by the appellant by cancelling the order dated 01.02.2015 passed by the respondent No.3.
10. That in the above circumstances, the Chairman of the learned Tribunal referred the to a Third Member of respondent No.1 as per Section 196(C)(5) of the Customs Act, 1969, who upon hearing the parties, passed its order on 03.05.2017 (which was only communicated to the appellant after 18.05.2017) setting aside the order dated 01.02.2015 passed by the respondent No.3 and refixing the value addition at an inflated rate of 43.39% and thus increasing the base value of Caustic Soda (Flux) per 50 kg at Tk. 865.97, Caustic Soda (Liquid) 60% per kg at Tk. 8.71, Hydrogen peroxide 60% per 30 Kg at Tk. 303.32, Hydrogen peroxide 60% bulk per kg at Tk. 8.78, Chlorinated Paraffin Wax (C.P.W.) per 250 kg at Tk. 15972.47 and Chlorinated Paraffin Wax (C.P.W) 52% per 250 kg at Tk. 13902.86.

11. That in these circumstances, the matter was referred to a fourth member of respondent No.1 since the order passed by the third member of the respondent No.1 is a different order from the earlier orders and the next date for hearing of the matter was fixed on 14.05.2017. The appellant upon knowledge about the same, issued its letter dated 14.05.2017 stating inter alia that though the appellant have filed the appeal on 16.04.2015, the respondent No.1 (since no order was ever communicated to the appellant) and failed to dispose of the same within the statutory time limit of 2 years from the date of filing (i.e. within 16.04.2017) as required under Section 42(4) of the VAT Act, 1991 and as such the appeal would be deemed to have been allowed. The aforesaid letter dated 14.05.2017 was duly received by the respondent No.1.
12. That the appellant at the time of hearing on 14.05.2017 submitted that the appellant filed the appeal on 16.04.2015 and the Section 42(4) of the VAT Act, 1991 requires that an appeal shall be disposed off within 2 years from the date of filing (i.e. within 16.04.2017), failing which the appeal would be deemed to have been allowed. But the respondent No.1 passed the impugned decision and order on 18.05.2017 without paying an heed to the aforesaid submission of the appellant and rather incorporated in the order that the parties has agreed to the said decision. Therefore the impugned order is liable to be set aside.
13. That it is stated that the appellant has never agreed to such arbitrary determination of value addition to the goods at a flat rate of 43.39% without any objective basis since the appeal filed by the appellant was deemed to have been allowed in terms of the Section 42(2) of the VAT Act, 1991 and as such the appellant rightly set out the same verbally and in writing at the time of hearing on 14.05.2017. Hence, no question of agreeing to such arbitrary determination of value addition at a flat 43.39% rate does not arise.
14. That it is submitted that the appellant filed an appeal on 16.04.2015 being CEVT Case No. CEVT/CASE(VAT)-35/2014 under Section 42(1)(Kha) of the VAT Act, 1991 before the Customs, Excise and VAT Appellate Tribunal. That the Section 42(4) of the VAT Act, 1991 provides an appeal shall be disposed off within 2 years from the date of filing (i.e. within 16.04.2017), failing which the appeal would be deemed to have been allowed. But the respondent No.1 passed the impugned decision and order on 18.05.2017 which is long after the lapse of 2 years period as prescribed under the law and therefore the appeal shall be deemed to have been allowed in full.
15. That it is submitted that the respondent No.1 in passing the impugned order arbitrarily fixed the value addition of the goods at a flat rate of 43.39% in a wholesale manner without any objective basis and without conducting market survey or investigation on the basis of stored information about value addition and as such the base values of the goods are not reasonable as required under the Rule 3(3) of the 1991 Rules, 1991 and hence, the impugned order is liable to be set aside.
16. That it is submitted that it is established and settled principle of legal position that a question of law can be agitated at any stage including the appellate stage of the proceedings as held in different judicial pronouncements. In view of the above, the Hon'ble High Court

Division can consider any legal ground even if those were not expressly taken earlier and that there is no legal bar in the Hon'ble High Court Division in considering the legal grounds.

17. That it is submitted that the appellant has no other equally efficacious remedy against the impugned orders and begs to move Your Lordships on the followings:

GROUND S

- I. For that the appellant filed an appeal on 16.04.2015 being CEVT Case No. CEVT/CASE(VAT)-35/2014 under Section 42(1)(Kha) of the VAT Act, 1991 before the Customs, Excise and VAT Appellate Tribunal. That the Section 42(4) of the VAT Act, 1991 provides an appeal shall be disposed off within 2 years from the date of filing (i.e. within 16.04.2017), failing which the appeal would be deemed to have been allowed. But the respondent No.1 passed the impugned decision and order on 18.05.2017 which is long after the lapse of 2 years period as prescribed under the law and therefore the appeal shall be deemed to have been allowed in full.
- II. For that as respondents violated Rule 3(3) of the 1991 Rules inasmuch as it did not conduct any market survey or investigation on the basis of stored information about value addition, actual expenditure and declared value of identical or similar goods to fix the base value of the goods in question and as such no survey report was ever served upon the appellant whereas the respondent No.1 has arbitrarily fixed the base values at astronomical level and therefore, the impugned judgment and order is liable to be set aside.
- III. For that the respondents arbitrarily and illegally disallowed the net profit stated by the appellant and fixed the net profit at a flat rate of 43.39% which amounts to assuming the position of the appellant and as such the same is beyond the scope of Rule 3(3) of the 1991 Rules. Therefore, the impugned order is liable to be set aside.
- IV. For that the respondent No.1 in passing the impugned order failed to appreciate that though the respondent No.1 arbitrarily fixed the base value of the products without giving any reference of the similar goods (as stated by the respondent No.1) and as such kept the appellant completely in the dark about any purported market survey, comparative price declarations made by any other assessee and/or comparison with the similar goods and therefore, the impugned order is liable to be set aside.
- V. For that the respondent No.1 in passing the impugned order arbitrarily fixed the value addition of the goods at a flat rate of 43.39% in a wholesale manner without any objective basis and without conducting market survey or investigation on the basis of stored information about value addition and as such the base values of the goods are not reasonable as required under the Rule 3(3) of the 1991 Rules, 1991 and hence, the impugned order is liable to be set aside.
- VI. For that it is established and settled principle of legal position that a question of law can be agitated at any stage including the appellate stage of the proceedings as held in different judicial pronouncements. In view of the above, the Hon'ble High Court Division can consider any legal ground even if those were not expressly taken earlier and that there is no legal bar in the Hon'ble High Court Division in considering the legal grounds.

Wherefore it is humbly prayed that your Lordship would graciously be pleased to :

- A. Admit the appeal
- B. Call for the records of CEVT/Case (VAT)-35/2015 from the respondent No.1-Tribunal;
- C. After hearing the parties and perusing the records, to set aside Order bearing Memo No. CEVT/Case (VAT)-35/2015 dated 18.05.2017 passed by a Member (Technical) of the respondent No.1 on reference of the different Order dated 03.05.2017 passed by another Member (Technical) of the respondent No.1 on reference (under Section 196C(5) of the Customs Act, 1969) arising from dissenting orders dated 12.04.2017 and 13.04.2017 passed by the members of the respondent No.1, one affirming and the other setting aside the order bearing Memo No. 4(6)/ Daa:Purbo KMi:/Musok(28)-Basto:/Mulyo Anu:/Tasnim Chemical/2014/22(3) dated 01.02.2015 passed by the respondent No.2, and thereby, affirm the order dated 13.04.2017 passed by the Judicial allowing the appeal filed by the appellant and allow the price declarations (Musak-1 Forms) dated 13.11.2014 submitted by the appellant;
- D. Award costs in favour of the appellant and against the respondents;
- E. Pending hearing of the appeal, to stay the operation of the (i) the order dated 18.05.2017 bearing Memo No. CEVT/Case (VAT)-35/2015 passed by the respondent No.1.
- F. To pass such other or orders as Your Lordship may deem fit and proper.

And for this Act of kindness, the appellant, as in duty bound shall ever pray.

CERTIFICATE

I certify that the above are good grounds for success in the above and I will support these grounds at the time of hearing of the appeal.

Sd/- Illegible

(.....)

Advocate

For the Appellant.

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL STATUTORY JURISDICTION)**

CUSTOMS APPEAL NO. 64 OF 2015.

IN THE MATTER OF:

An appeal under Section 196D of the Customs Act, 1969.

AND

IN THE MATTER OF:

Grameen Phone Limited, represented by its Chief Executive Officer, GP House, Bashundhara Residential Area, Police Station- Badda, District- Dhaka.

..... **Appellant.**

-VERSUS-

1. Customs, Excise and VAT Appellate Tribunal, represented by its Chairman, Jiban Bima Bhaban, 3rd Floor, 10, Dilkusha Commercial Area, Police Station- Motijheel, District- Dhaka.
2. The Commissioner (Appeal) & President, Review Committee, 8, Shahid Sangbadik Selina Parvin Sarak, Boro Magh Bazar, Police Station- Ramna, District- Dhaka.
3. The Commissioner, Customs House, Dhaka, Police Station- Airport, District- Dhaka.
4. Southeast Bank Limited, Bashundhara Branch, Plot No. 142, Block-B, Bashundhara R/A, Dhaka.

..... **Respondents.**

AND

IN THE MATTER OF:

Impugned Judgment and Order dated: 15.04.2015 passed by the respondent No.1 in Nathi No. CEVT/Case (Cus)-770/2011 dismissing the appeal being No. 770 of 2011 thereby setting aside the Order vide Nathi No. 5-Shulka/8(71)Pre-Ship / Review / 2011 dated 11.07.2011 passed by the respondent No.2 and also affirming the value of the Customs Authority in respect of the price of 32 KB SIM Card.

To,

Mr. Justice Surendra Kumar Sinha, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the Supreme Court of Bangladesh.

The humble petition of the Appellant above named most respectfully—

S H E W E T H:

1. That the above appeal has been preferred under 196D of the Customs Act, 1969 (the Act) against the judgment and order dated: 15.04.2015 passed by the respondent No.1 in Nathi No. CEVT/Case (Cus)- 770/2011 dismissing the appeal being No. 770 of 2011 thereby setting aside the Order vide Nathi No. 5-Shulka/8(71)Pre-Ship / Review / 2011 dated 11.07.2011 passed by the respondent No.2 and also affirming the value of the Customs Authority in respect of the price of 32 KB SIM Card.
2. That the instant Appellant, a Public Limited Company, being duly incorporated under the relevant Companies Act, has been carrying on business as the fastest growing operator of Cellular mobile radio telephone services through out Bangladesh under licence granted by the Bangladesh Telecommunications Regulatory Commission (BTRC). The Company is also registered under applicable provision of the Value Added Tax Act, 1991.
3. That as required under the regulatory requirement, the Appellant in due applicable procedure obtained No Objection on 23.03.2011 from the BTRC to import Capital Machinery being SIM card for mobile telecommunication industry from China; a copy of such no objection has been sent by BTRC to all customs stations for necessary actions.
4. That the Appellant and its Supplier has a contract for supply of SIM Card on regular basis under a competitive price whereby the Appellant purchases SIM Card through tender from China in accordance with applicable law. Pursuant to said Contract, the Supplier thereby issued a Pro-forma Invoice base on which the Appellant opened a Letter of Credit (L/C) No. 2486-1102-0462 dated 29.03.2011 for importing of 32 KB SIM Card from China @ USD 0.19/ Unit.
5. That the SIM Card being liable to be inspected before Shipment, the Government approved Pre-shipment Inspection Agency (PSI) inspected SIM Card, thereby, issued a Clean Report of Finding being No. BV110cb77a dated 09.05.2011 certifying quantity, value and HS Code of the goods. However, the PSI Agent most illegally and arbitrarily determined a higher price of US\$ @0.45 per unit.
6. That after the shipment of the SIM Card by the Supplier the Appellant in due process obtained all shipping documents including but not limited to Invoice and Airway Bill.
7. That thereafter the Appellant submitted Bill of Entry No.C-131478 dated 26.05.2011 along with all relevant papers/ documents to the office of the Respondent No. 3 for assessment and release of goods.
8. That with under surprise the office of the Respondent No.3 without any reason in a most arbitrary and *malafide* manner ignored the price of the CRF, thereby most illegally increased the value of the SIM Card as USD 1.25/ unit which is higher than the CRF certified price. In such arbitrary fixing of the price, the Appellant was not informed.

However, the Appellant having found no other alternative released the goods upon furnishing Bank Guarantee No. SEBL/BASHU/BG/12/2011 dated 01.06.2011 for Taka 3,76,48,065.95 only.

9. That the Appellant thereafter filed an application to the Review Committee for cancellation of above assessment being not in accordance with law, the Review Committee passed a decision vide Nathi No. 5-Shulka / 8(71) Pre-Ship / Review/2011 dated 11.07.2011 fixing value of SIM Card @ US\$ 0.55 per unit for 32 KB which is a Tariff Value as per SRO No. 159-Ain/2011/2346-Customs dated 09.06.2011.
10. That the Appellant being aggrieved and dissatisfied with the above decision of the Review Committee preferred an appeal being No. Nathi No. CEVT/Case(Cus)-770/2011 before the respondent No.1 and upon hearing the appeal the respondent No. 1 by the impugned judgment allowed the appeal, thereby, set aside the judgment of the respondent No. 2 and upheld the price of the Customs Authority.
11. That being aggrieved by and dissatisfied with the impugned judgment and order passed by the respondent No.1 vide CEVT/Case(Cus)-770/2011, the Appellant preferred this appeal before your Lordships on the following amongst other—

GROUND S

- I. For that the respondent No.1 in passing the impugned judgment failed to appreciate that the Customs Authority did not have any specific and clear information as required under sub-rule (3) of Rule 22 of the Pre-shipment Inspection Rules, 2002 for rejecting the price of CRF, and in absence of any such information, the value determined by the PSI Agent shall be the transaction value, and as such the impugned judgment and order is liable to be set aside.
- II. For that the respondent No. 1 failed to appreciate that the price of SIM Card as determined by the PSI Agent shall be the “Transaction Value” as per Valuation Rules, 2000 but the Customs Authority by overstepping the mandatory steps of Valuation Rules, 2000 assessed the value of the SIM Card at a higher rate which is illegal, and as such the impugned judgment and order is liable to be set aside.
- III. For that the respondent No.1 failed to appreciate that the value of the goods of the Appellant being a tender value shall have to be accepted as transaction value as per Rule 4 of the Valuation Rules, 2000, and as such, the impugned judgment and order is liable to be set aside.
- IV. For that the respondent No.1 erred in law and thereby arrived at a wrong decision inasmuch as the PSI Agent after due compliance with the provisions of PSI Rule- 2002 certified the price of the product being in accordance with Article 8 of the GATT Valuation Agreement but the Customs Authority without any basis ignored the price of the CRF, and as such, impugned order is liable to be set aside.
- V. For that the value of the Customs Authority is baseless, arbitrary, *malafide* and beyond the sanction of law.
- VI. For that the respondent No.1 in passing the impugned order violated Section 25 and 25A of the Customs Act, 1969 although value declared in accordance with said provision of law

shall be the value of the goods for assessment in absence of any contrary and in the instant case, the Customs Authority failed to produce sufficient materials to the contrary.

- VII. For that the respondent No.1 without apprising materials on record and without having any regards to the facts/ documents including contract and circumstances passed the impugned order which is liable to be set aside.
- VIII. For that the impugned judgment and order is neither proper nor in accordance with law.
- IX. For that the impugned order is bad in law as well as in facts and circumstances of the case, and as such is liable to be set aside.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to—

- A) Admit the appeal;
- B) Call for the records and issue notices upon the respondents.
- C) After hearing the parties and perusing the documents set aside the Judgment and Order dated: 15.04.2015 passed by the respondent No.1 in Nathi No. CEVT/Case (Cus)- 770/2011 dismissing the appeal being No. 770 of 2011 thereby setting aside the Order vide Nathi No. 5-Shulka/8(71)Pre-Ship / Review / 2011 dated 11.07.2011 passed by the respondent No.2 and also affirming the value of the Customs Authority in respect of the price of 32 KB SIM Card.
- D) Pass an order releasing the Bank Guarantee.

And for this act of kindness you're Appellant as in duty bound shall ever pray.

CERTIFICATE

Certified that I have gone through the connected papers and the grounds to appeal and having those been drawn by me, I undertake to support those at the time of hearing.

Sd/- Illegible
Advocate.

List of Documents:

- 1. Memorandum of Appeal;
- 2. Judgment and order of the Tribunal;
- 3. Vokatnama;
- 4. Second Judge's copy.

Total 04 sets

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY APPELLATE JURISDICTION)**

VAT APPEAL NO. _____ OF 2021

IN THE MATTER OF

An application under section 42(1)(Ga) of the Valued Added Tax Act, 1991, read with section 137(2)(Ga) of the Value Added Tax and Supplementary Duty Act, 2012.

AND**IN THE MATTER OF**

M/s. Dekko Washing Ltd., of Purbow Narasinghapur, Ashulia, Savar, Dhaka represented by its Company Secretary.

..... **Appellant.**

- Versus -

1. Customs, Excise & VAT Appellate Tribunal, Jiban Bima Bhabon, 3rd Floor, 10, Dilkusha C/A, Dhaka- 1000 represented by its President.
2. Commissioner of Customs, Excise and VAT Commissionerate, Dhaka (West), Dhaka, Plot Nos. 2 and 4, Road 1, Block A (5th – 8th level), Mirpur 11, Dhaka - 1216.

..... **Respondents.**

AND**IN THE MATTER OF**

Judgment and order dated 27.05.2021 as contained in Nothi No. CEVT/Case(VAT)-184/19 passed by the respondent No. 1, Tribunal, dismissing the appellant's appeal under section 42(1)(Kha) of the Value Added Tax Act, 1991.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief justice of Bangladesh and his companion Judges of the said Hon'ble Court.

The humble petition on behalf of the Petitioner most respectfully—

S H E W E T H

1. That the petitioner is a 100% export oriented company earning a huge amount of foreign currency every year for Bangladesh. The petitioner is a regular tax and VAT payer. The petitioner is doing business having all necessary licenses from all the authorities concerned.
2. That the fact in short of the instant case is that the Opposite party No. 2, Commissioner of Customs, Excise and VAT Commissionerate, Dhaka (West), Dhaka, Plot Nos. 2 and 4, Road 1, Block A (5th – 8th level), Mirpur 11, Dhaka - 1216 issued show cause notice under section 55(1) of the Value Added Tax Act on 17.12.2018.
3. That the Petitioner gave written reply on 03.02.2019 stating all the details and denying all the materials allegations made in the notice.
4. That thereafter the opposite party no. 2 issued final notice under section 55(3) of the said Act. In the final demand, the petitioner made demand of Tk. 14,48,194.28/-.
5. That being aggrieved by and dissatisfied with the said demand, the Petitioner preferred appeal under section 8২(১)(খ) read with section ৪২(২)(খ) of the মূল্য সংযোজন কর আইন, ১৯৯১ (১৯৯১ সনের ২২ নং আইন) before the Customs, Excise and VAT Appellate Tribunal, Opposite party No. 1. At the time of filing appeal, the petitioner duly deposited the required amount in accordance with laws.
6. That after hearing the parties and perusing the documents, the learned Tribunal below affirmed the demand order passed by the opposite party below vide judgment and order being নথি নং-সিইভিটি/কেইস(ভ্যাট)-১৮৪/১৯ dated 27.05.2021 which is the impugned judgment here; against which the petitioner is filing this revision application.
7. That the Petitioner has made payment of 10% of the VAT Demanded as statutory payment required for filing the instant Appeal.
8. That it is submitted that the petitioner is a 100% export oriented company who are enjoying tax and VAT exemption facilities by the Government under different heads of income and other sources, but in the present case the opposite parties imposed VAT on some heads of income ignoring the express provision of law which have made those head VAT free. As such, the impugned judgment and order is liable to be set aside for ends of justice.
9. That it is submitted that the Service Code S037.00 and S040.00 are VAT exempted for the 100% percent export oriented company. The petitioner being a 100% export oriented company is entitled to VAT exemption, but the Tribunal as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which is liable to be revised / set aside for ends of justice.
10. That it is submitted that the petitioner's factory place has been enjoying bond facility; therefore under the relevant SRO the establishments and structures within that place are entitled to get VAT exemption in accordance with law; but the Commissioner as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which is liable to be revised / set aside for ends of justice.
11. That it is submitted that the opposite parties erred in law in not allowing some essential expenditures of the petitioner as categorically mentioned by the petitioner in its reply. The opposite parties did not compare those expenses with the income tax returns and relevant vouchers wherefrom it would be clear that there was no scope for the petitioner for evasion of VAT at any circumstances.

12. That it is submitted that the imposition of the disputed VAT in question is absolutely arbitrary, unfounded, baseless and arbitrary. The officials of the opposite party no. 2 did not do any field inspection or consider all the related vouchers for determining the real expenses. Moreover, the opposite party made reference as to local audit. It is already a settled matter by this Hon'ble Court that any revenue claim based on local audit is illegal and not tenable in the eye of law. But the Tribunal as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which is liable to be set aside for ends of justice.
13. That it is submitted that the opposite parties committed an error of law by misinterpreting and mis-applying sections 3(3)(Ga), 3(3)(Uma) and 6(4Kaka) and 6(4KaKaKa) of the Value Added Tax Act to the fact of the petitioner; as such the impugned judgment is liable to be set aside for ends of justice.
14. That it is submitted that it is stipulated in the section 55(1) that notice should be issued within 5 (five) years from the date when Value Added Tax (VAT) had been made, demanding by notice duties and Value Added Tax cited in the notice for paying the said duties and Value Added Tax within the time mentioned in the notice. Wherefore, here notice was issued on 27.12.2018 and stipulated time ought to be started on 26.12.2013, hence in the Fiscal Year 2013-2014 VAT should be calculated for $(365-179)= 186$ days and the rest 179 days is time barred as per time stipulated in the instant section, but the tribunal without considering the aforementioned stipulated period of time passed the impugned judgment, as such the same is liable to be set aside for ends of justice.
15. That it is submitted that section 3(3c) of the VAT Act, 1991 provided that Value Added Tax (VAT) should be payable by in case of service rendering the render of service but in the instant case the respondent arbitrarily calculated Vat under section 3(3e) which is illegal and malafide, Therefore, the impugned judgment is liable to be set aside for ends of justice.
16. That it is submitted that it is enunciated in Section 6 (4e) that "Both at source deducting authority and goods or service provider together will remain responsible for the amount of VAT to be deducted at source". But the respondent most illegally impose demand upon only upon the petitioner excluding the service provider. Despite of the utter illegality done by the respondent the Appellate Tribunal passed the impugned judgment which is bad in law as well as in fact. Therefore, the same is liable to be set aside for ends of justice.
17. That it is submitted that the respondent issued final demand notice under section 55(3) realizing demand of Tk. 14,48,194.28 without having any opportunity of being heard to the petitioner which is the violation of natural justice.
18. That thus being aggrieved by and dissatisfied with the impugned order, the appellant begs to file this appeal under section 42(1)(Ga)—

-GROUNDS-

- I. For that the petitioner is a 100% export oriented company who are enjoying tax and VAT exemption facilities by the Government under different heads of income and other sources, but in the present case the opposite parties imposed VAT on some heads of income ignoring the express provision of law which have made those head VAT free. As such, the impugned judgment and order is liable to be set aside for ends of justice.

- II. For that the Service Code S037.00 and S040.00 are VAT exempted for the 100% percent export oriented company. The petitioner being a 100% export oriented company is entitled to VAT exemption, but the Tribunal as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which is liable to set aside for ends of justice.
- III. For that the petitioner's factory place has been enjoying bond facility; therefore under the relevant SRO the establishments and structures within that place are entitled to get VAT exemption in accordance with law; but the Commissioner as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which is liable to be set aside for ends of justice.
- IV. For that the opposite parties erred in law in not allowing some essential expenditures of the petitioner as categorically mentioned by the petitioner in its reply. The opposite parties did not compare those expenses with the income tax returns and relevant vouchers wherefrom it would be clear that there was no scope for the petitioner for evasion of VAT at any circumstances.
- V. For that the imposition of the disputed VAT in question is absolutely arbitrary, unfounded, baseless and arbitrary. The officials of the opposite party no. 2 did not do any field inspection or consider all the related vouchers for determining the real expenses. Moreos, the opposite party made reference as to local audit. It is already a settled matter by this Hon'ble Court that any revenue claim based on local audit is illegal and not tenable in the eye of law. But the Tribunal as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which is liable to be set aside for ends of justice.
- VI. For that the opposite parties committed an error of law by misinterpreting and mis-applying sections 3(3)(Ga), 3(3)(Uma) and 6(4Kaka) and 6(4KaKaKa) of the Value Added Tax Act to the fact of the petitioner; as such the impugned judgment is liable to be set aside for ends of justice.
- VII. For that it is stipulated in the section 55(1) that notice should be issued within 5 (five) years from the date when Value Added Tax (VAT) had been made, demanding by notice duties and Value Added Tax cited in the notice for paying the said duties and Value Added Tax within the time mentioned in the notice. Wherefore, here notice was issued on 27.12.2018 and stipulated time ought to be started on 26.12.2013, hence in the Fiscal Year 2013-2014 VAT should be calculated for $(365-179)=186$ days and the rest 179 days is time barred as per time stipulated in the instant section, but the tribunal without considering the aforementioned stipulated period of time passed the impugned judgment, as such the same is liable to be set aside for ends of justice.
- VIII. For that section 3(3c) of the VAT Act, 1991 provided that Value Added Tax (VAT) should be payable by in case of service rendering the render of service but in the instant case the respondent arbitrarily calculated Vat under section 3(3e) which is illegal and malafide, Therefore, the impugned judgment is liable to be set aside for ends of justice.
- IX. For that it is enunciated in Section 6 (4e) that "Both at source deducting authority and goods or service provider together will remain responsible for the amount of VAT to be deducted at source". But the respondent most illegally impose demand upon only upon the petitioner excluding the service provider. Despite of the utter illegality done by the

respondent the Appellate Tribunal passed the impugned judgment which is bad in law as well as in fact. Therefore, the same is liable to be set aside for ends of justice.

- X. For that the respondent issued final demand notice under section 55(3) realizing demand of Tk. 14,48,194.28 without having any opportunity of being heard to the petitioner which is the violation of natural justice.

WHEREFORE, it is most humbly prayed that Your Lordships would be graciously pleased to—

- (a) Admit / register the appeal and call for the records;
- (b) Order for issuance of notice;
- (c) Upon hearing of the appeal and perusal of cause shown allow the appeal and set aside the Judgment and order dated 27.05.2021 as contained in Nothi No. CEVT/Case(VAT)-184/19 passed by the respondent No. 1, Tribunal, dismissing the appellant's appeal under section 42(1)(Kha) of the Value Added Tax Act, 1991.
- (d) Passed such other or further order or orders as may be deemed fit and proper.

And for this act of kindness, the appellant as in duty bound shall ever pray.

VERIFICATION

The Statements made herein above are true to my knowledge and are based on records maintained by me, in verification whereof I sign this petition of appeal on this the 24th day of August, 2021.

Through

(Syeda Nasrin)

Advocate

List of Documents :

- | | |
|---|-------|
| 1. Memo of Appeal | 1 set |
| 2. Copy of the Judgment of the Tribunal | 1 set |
| 3. Hon'ble 2 nd Judge's Copy | 1 set |
| 4. Vokatnama | 1 set |

Total = 4 sets

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY APPELLATE JURISDICTION)**

VAT APPEAL NO. OF 2021

IN THE MATTER OF

An application for stay.

**AND
IN THE MATTER OF**

M/s. Dekko Washing Ltd

..... **Appellant-petitioner.**

–Versus –

1. Customs, Excise & VAT Appellate Tribunal, and others.

..... **Respondents-opposite parties.**

To

Mr. Justice Syed Mahmud Hossain, the Hon’ble Chief justice of Bangladesh and his companion Judges of the said Hon’ble Court.

The humble petition on behalf of the Petitioner most respectfully—

S H E W E T H

1. That the petitioner is a 100% export oriented company earning a huge amount of foreign currency every year for Bangladesh. The petitioner is a regular tax and VAT payer. The petitioner is doing business having all necessary licenses from all the authorities concerned.
2. That the fact in short of the instant case is that the Opposite party No. 2, Commissioner of Customs, Excise and VAT Commissionerate, Dhaka (West), Dhaka, Plot Nos. 2 and 4, Road 1, Block A (5th – 8th level), Mirpur 11, Dhaka - 1216 issued show cause notice under section 55(1) of the Value Added Tax Act on 17.12.20218. Photocopy of the show-cause notice dated 17.12.2018 is annexed hereto and marked as **Annexure “A”**.
3. That the Petitioner gave written reply on 03.02.2019 stating all the details and denying all the materials allegations made in the notice. Photocopy of the reply dated 03.02.2019 is annexed hereto and marked as **Annexure “B”**.

4. That thereafter the opposite party no. 2 issued final notice under section 55(3) of the said Act. In the final demand, the petitioner made demand of Tk. 14,48,194.28/-. Photocopy of the notice is annexed hereto and marked as **Annexure “C”**.
5. That being aggrieved by and dissatisfied with the said demand, the Petitioner preferred appeal under section 8২(১)(খ) read with section ৪২(২)(খ) of the মূল্য সংযোজন কর আইন, ১৯৯১ (১৯৯১ সনের ২২ নং আইন) before the Customs, Excise and VAT Appellate Tribunal, Opposite party No. 1. At the time of filing appeal, the petitioner duly deposited the required amount in accordance with laws. Photocopy of the memo of appeal along with all required documents is annexed hereto and marked as **Annexure “D”**.
6. That after hearing the parties and perusing the documents, the learned Tribunal below affirmed the demand order passed by the opposite party below vide judgment and order being নথি নং-সিইভিটি/কেইস(ভ্যাট)-১৮৪/১৯ dated 27.05.2021 which is the impugned judgment here; against which the petitioner is filing this revision application.
7. That the Petitioner has made payment of 10% of the VAT Demanded as statutory payment required for filing the instant Appeal. Photocopy of the challan is annexed hereto and marked as **Annexure “E”**.
8. That it is submitted that the petitioner is a 100% export oriented company who are enjoying tax and VAT exemption facilities by the Government under different heads of income and other sources, but in the present case the opposite parties imposed VAT on some heads of income ignoring the express provision of law which have made those head VAT free. As such, the impugned judgment and order may kindly be stayed.
9. That it is submitted that the Service Code S037.00 and S040.00 are VAT exempted for the 100% percent export oriented company. The petitioner being a 100% export oriented company is entitled to VAT exemption, but the Tribunal as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which may kindly be stayed.
10. That it is submitted that the petitioner’s factory place has been enjoying bond facility; therefore under the relevant SRO the establishments and structures within that place are entitled to get VAT exemption in accordance with law; but the Commissioner as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which may kindly be stayed for ends of justice.
11. That it is submitted that the opposite parties erred in law in not allowing some essential expenditures of the petitioner as categorically mentioned by the petitioner in its reply. The opposite parties did not compare those expenses with the income tax returns and relevant vouchers wherefrom it would be clear that there was no scope for the petitioner for evasion of VAT at any circumstances.
12. That it is submitted that the imposition of the disputed VAT in question is absolutely arbitrary, unfounded, baseless and arbitrary. The officials of the opposite party no. 2 did not do any field inspection or consider all the related vouchers for determining the real expenses. Moreos, the opposite party made reference as to local audit. It is already a settled matter by this Hon’ble Court that any revenue claim based on local audit is illegal and not tenable in the eye of law. But the Tribunal as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which may kindly be stayed.

13. That it is submitted that the opposite parties committed an error of law by misinterpreting and mis-applying sections 3(3)(Ga), 3(3)(Uma) and 6(4Kaka) and 6(4KaKaKa) of the Value Added Tax Act to the fact of the petitioner; as such the impugned judgment may kindly be stayed.
14. That it is submitted that it is stipulated in the section 55(1) that notice should be issued within 5 (five) years from the date when Value Added Tax (VAT) had been made, demanding by notice duties and Value Added Tax cited in the notice for paying the said duties and Value Added Tax within the time mentioned in the notice. Wherefore, here notice was issued on 27.12.2018 and stipulated time ought to be started on 26.12.2013, hence in the Fiscal Year 2013-2014 VAT should be calculated for $(365-179)= 186$ days and the rest 179 days is time barred as per time stipulated in the instant section, but the tribunal without considering the aforementioned stipulated period of time passed the impugned judgment, as such the same may kindly be stayed.
15. That it is submitted that section 3(3c) of the VAT Act, 1991 provided that Value Added Tax (VAT) should be payable by in case of service rendering the render of service but in the instant case the respondent arbitrarily calculated Vat under section 3(3e) which is illegal and malafide, Therefore, the impugned judgment may kindly be stayed.
16. That it is submitted that it is enunciated in Section 6 (4e) that “Both at source deducting authority and goods or service provider together will remain responsible for the amount of VAT to be deducted at source”. But the respondent most illegally impose demand upon only upon the petitioner excluding the service provider. Despite of the utter illegality done by the respondent the Appellate Tribunal passed the impugned judgment which is bad in law as well as in fact. Therefore, the same may kindly be stayed.
17. That it is submitted that the respondent issued final demand notice under section 55(3) realizing demand of Tk. 14,48,194.28 without having any opportunity of being heard to the petitioner which is the violation of natural justice.
18. That the petitioner craves leave of the Hon’ble Court to swear an affidavit by filing photocopies of Annexures-A to D, the original of which lies with the Opposite party, the original of which was submitted while filling appeal before the Tribunal. The contents of the photocopies are true and genuine to the belief of the petitioner and the learned Advocate attested the same.

WHEREFORE, it is most humbly prayed that Your Lordships may graciously be pleased to stay the impugned judgment and order dated 27.05.2021 as contained in Nothi No. CEVT/Case(VAT)-184/19 passed by the respondent No. 1, Tribunal, dismissing the appellant’s appeal under section 42(1)(Kha) of the Value Added Tax Act, 1991 and/or pass such other or further order or orders as to your Lordships may deem fit and proper.

And for this act kindness, the applicant as in duty bound shall ever pray.

AFFIDAVIT

I, Monjur Alam, son of Motiul Islam and Rahima Begum, Company Secretary of Dekko Designs Limited, of Purbow Narashingapur, Ashulia, Savar, Dhaka, permanent address : House / Holding 431/11, Boxibagh, level 3, Malibagh, Shantinagar – 1217, Motijheel, Dhaka South City Corporation, Dhaka, aged about 46 years, by faith- Muslim, by Profession- Business, by Nationality- Bangladeshi, National ID No. 3284129966 do hereby solemnly affirm and say as follows—

1. That I am the petitioner of this application and well-conversant with the facts of this case and competent to swear this Affidavit.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

DEPONENT

The deponent is known to me
and identified by me.

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2021
at A.M./P.M.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY REVISION JURISDICTION)**

VAT REVISION NO. OF 2021

IN THE MATTER OF

An application for Revision under section ১২৪ of the মূল্য সংযোজন কর ও সম্পূরক শুল্ক আইন, ২০১২.

AND**IN THE MATTER OF**

Agami Apparels Limited, of 62, Kathgora, Noyapara, Bishmail, Zirabo, Ashulia, Savar, Dhaka, represented by its Company Secretary.

..... **Petitioner.**

- Versus -

1. Customs, Excise & VAT Appellate Tribunal, Jiban Bima Bhabon, 3rd Floor, 10, Dilkusha C/A, Dhaka- 1000 represented by its President.
2. Commissioner of Customs, Excise and VAT Commissionerate, Dhaka (West), Dhaka, Plot Nos. 2 and 4, Road 1, Block A (5th – 8th level), Mirpur 11, Dhaka - 1216.

..... **Opposite parties.**

AND**IN THE MATTER OF**

Judgment and order being নথি নং-সিইভিটি/কেইস(ভ্যাট)-৯২/২০১৯ dated 27.12.2020 passed by the Customs, Excise and VAT Appellate Tribunal dismissing the appeal and thereby affirming the Order being নথি নং-৪/মূসক/পশ্চি:কমি:-৮(৩৯৭)আগামী এপারেলস/সিএ অডিট/বিচার/২০১৮/৪৭৪(২) dated 22.01.2019 passed by opposite party no. 2.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief justice of Bangladesh and his companion Judges of the said Hon'ble Court.

The humble petition on behalf of the Petitioner most respectfully—

S H E W E T H

1. That the petitioner is a 100% export oriented company earning a huge amount of foreign currency every year for Bangladesh. The petitioner is a regular tax and VAT payer. The petitioner is doing business having all necessary licenses from all the authorities concerned.
2. That the fact in short of the instant case is that the Opposite party No. 2, Commissioner of Customs, Excise and VAT Commissionerate, Dhaka (West), Dhaka, Plot Nos. 2 and 4, Road 1, Block A (5th – 8th level), Mirpur 11, Dhaka - 1216 issued show cause notice under section 55(1) of the Value Added Tax Act on 5.11.2018. Photocopy of the show-cause notice dated 5.11.2018 is annexed hereto and marked as **Annexure “A”**.
3. That the Petitioner gave written reply on 7.11.2018 stating all the details and denying all the materials allegations made in the notice. Photocopy of the reply dated 7.11.2018 is annexed hereto and marked as **Annexure “B”**.
4. That thereafter the opposite party no. 2 issued final notice under section 55(3) of the said Act. In the final demand, the petitioner made demand of Tk. 25,44,771.52/-. Photocopy of the notice is annexed hereto and marked as **Annexure “C”**.
5. That being aggrieved by and dissatisfied with the said demand, the Petitioner preferred appeal under section 8২(১)(খ) read with section ৪২(২)(খ) of the মূল্য সংযোজন কর আইন, ১৯৯১ (১৯৯১ সনের ২২ নং আইন) before the Customs, Excise and VAT Tribunal, Opposite party No. 1. At the time of filing appeal, the petitioner duly deposited the required amount in accordance with laws. Photocopy of the memo of appeal along with all required documents is annexed hereto and marked as **Annexure “D”**.
6. That after hearing the parties and perusing the documents, the learned Tribunal below affirmed the demand order passed by the opposite party below vide judgment and order being নথি নং-সিইভিডি/কেইস(ভ্যাট)-৯২/২০১৯ dated 27.12.2020 which is the impugned judgment here; against which the petitioner is filing this revision application. Certified copy of the judgment is annexed hereto and marked as **Annexure “E”**.
7. That the Petitioner has made payment of 10% of the VAT Demanded as statutory payment required for filing the instant Revision. Photocopy of the challan is annexed hereto and marked as **Annexure “F”**.
8. That the Petitioner craves leave of the Hon’ble Court to swear an affidavit by filing photocopies of Annexures-A to D, the original of which lies with the Opposite party, the original of which was submitted while filling appeal before the Tribunal. The contents of the photocopies are true and genuine to the belief of the Petitioner.
9. That in filing this revision delay occurred due to on-going pandemic arising out of COVID-19. Due to this pandemic the petitioner could not collect the certified copy of the impugned judgment in time and also could not hand-over the same to the learned Advocate for filing this revision application. Therefore, the delay caused thereon is purely unintentional and *bonafide*, which may kindly be condoned for ends of justice; otherwise the petitioner shall suffer irreparable loss and injury which may not be compensated in terms of money, and its entire export may face difficulty in port which will ultimately make our country losing foreign currency. Hence, the delay may kindly be condoned for ends of justice.

10. That the Petitioner being aggrieved by and dissatisfied with the impugned Judgment and order being নথি নং-সিইভিডি/কেইস(ভ্যাট)-৯২/২০১৯ dated 27.12.2020 passed by the Customs, Excise and VAT Appellate Tribunal dismissing the appeal, thereby affirming the Order being নথি নং-৪/মূসক/পশ্চি:কমি:-৮(৩৯৭)আগামী এপারেলস/সিএ অডিট/বিচার/ ২০১৮/৪৭৪(২) dated 22.01.2019 passed by opposite party no. 2 on the following amongst other grounds—

-GROUNDS-

- I. For that the petitioner is a 100% export oriented company who are enjoying tax and VAT exemption facilities by the Government under different heads of income and other sources, but in the present case the opposite parties imposed VAT on some heads of income ignoring the express provision of law which have made those head VAT free. As such, the impugned judgment and order is liable to be set aside for ends of justice.
- II. For that the Service Code S037.00 and S040.00 are VAT exempted for the 100% percent export oriented company. The petitioner being a 100% export oriented company is entitled to VAT exemption, but the Tribunal as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which is liable to be revised / set aside for ends of justice.
- III. For that the petitioner's factory place has been enjoying bond facility; therefore under the relevant SRO the establishments and structures within that place are entitled to get VAT exemption in accordance with law; but the Tribunal as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which is liable to be revised / set aside for ends of justice.
- IV. For that the opposite parties erred in law in not allowing some essential expenditures of the petitioner as categorically mentioned by the petitioner in its reply. The opposite parties did not compare those expenses with the income tax returns and relevant vouchers wherefrom it would be clear that there was no scope for the petitioner for evasion of VAT at any circumstances.
- V. For that the imposition of the disputed VAT in question is absolutely arbitrary, unfounded, baseless and arbitrary. The officials of the opposite party no. 2 did not do any field inspection or consider all the related vouchers for determining the real expenses. Moreso, the opposite party made reference as to local audit. It is already a settled matter by this Hon'ble Court that any revenue claim based on local audit is illegal and not tenable in the eye of law. But the Tribunal as well as Appellate Authority committed an error of law by not providing the Vat exemption facility to the petitioner, which is liable to be revised / set aside for ends of justice.
- VI. For that the opposite parties committed an error of law by misinterpreting and mis-applying sections 3(3)(Ga), 3(3)(Uma) and 6(4Kaka) and 6(4KaKaKa) of the Value Added Tax Act to the fact of the petitioner; as such the impugned judgment is liable to be revised / set aside for ends of justice.

WHEREFORE, it is most humbly prayed that Your Lordships would be graciously pleased to—

- (a) Admit the Revision Application by condoning delay of _____ days, call for the records, issue Rule calling upon the Opposite parties to show cause as to why the impugned judgment and order being নথি নং-সিইভিডি/কেইস(ভ্যাট)-৯২/২০১৯ dated 27.12.2020 passed by the Customs, Excise and VAT Appellate Tribunal dismissing the appeal and thereby affirming the Order being নথি নং-৪/মুসক/পক্ষি:কমি:-৮(৩৯৭)আগামী এপারেলস/ সিএ অডিট/বিচার/ ২০১৮/৪৭৪(২) dated 22.01.2019 passed by opposite party no. 2 shall not be revised / set aside and annulled; and
- (b) On perusal of the records, after hearing the parties and showing cause if any make the Rule absolute; and
- (c) Pending hearing of this revision application, Your Lordships may kindly be pleased to stay the operation of the impugned judgment and order being নথি নং-সিইভিডি/কেইস(ভ্যাট)-৯২/২০১৯ dated 27.12.2020 passed by the Customs, Excise and VAT Appellate Tribunal for ends of justice;
- (d) Award cost in favour of the petitioner, and / or;
- (e) Pass such other order/order as to your Honor may deem fit and proper.

And for this act of kindness the Petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Monjur Alam, son of Motiul Islam and Rahima Begum, Company Secretary of Agami Apparels Limited, of 62, Kathgora, Bishmail, Zirabo, Ashulia, Savar, Dhaka, permanent address : House / Holding 431/11, Boxibagh, level 3, Malibagh, Shantinagar – 1217, Motijheel, Dhaka South City Corporation, Dhaka, aged about 46 years, by faith- Muslim, by Profession- Business, by Nationality- Bangladeshi, National ID No. 3284129966 do hereby solemnly affirm and say as follows—

1. That I am the petitioner of this revision application and well-conversant with the facts of this case and competent to swear this Affidavit.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2021
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA

Sample

BEFORE THE CUSTOMS, EXCISE & VAT APPELLATE TRIBUNAL, DHAKA

CEVT/CASE (VAT) NO. OF 2019

IN THE MATTER OF:

An Application under Section 196A of the Customs Act,
1969.

AND

IN THE MATTER OF:

M/S. Yahang Shoes & Materials (Pvt.) Ltd., of Gorat,
Sarker Market, Ashulia, Savar, Dhaka, represented by its
authorized director Shah Israil.

.....**Appellate.**

—VERSUS—

1. The Commissioner of Customs, Excise & VAT Commissionerate, Dhaka(West) Dhaka.
2. The Divisional Officer, Custom, Excise & VAT, Savar Division, H. K. Tower, C -37/1, Anandapur, Savar, Dhaka.
3. The Revenue Officer, Office of Revenue Office, Custom, Excise & VAT, Dhamsona Circle, H. K. Tower, C -37/1, Anandapur, Savar, Dhaka.
4. National Board of Revenue, represented by its Chairman, RajashwaBhaban, Segunbagicha, Police Station- Ramna, Dhaka.

.....Respondents.

AND**IN THE MATTER OF:**

Impugned order dated 18.06.2019 being memo No. ৪/মূসক/পশ্চিকমিঃ-

৮(৫০)ইয়াহাংসুজ/মূসকফাঁকি/বিচার/২০১৯/১৯১৪ passed by the Respondent No.1, imposing demand of VAT of BDT. 38,76,378.00/- (Taka Thirty Eight Lac Seventy Six Thousand Three Hundred Seventy Eight) only along with compensation of 2% interest until realization of the same against the appellant.

The humble petition of the petitioners above named most respectfully—

S H E W E T H:

1. That That the petitioner is a Company limited by shares incorporated in the Registrar of Joint Stock Companies and Firms (RJSC) of Bangladesh under the Companies Act, 1994 bearing VAT registration no. 171510005159, and the addresses given in the cause title is correct address for service of all process from this Hon'ble Court.
2. This appeal to be file is to be filed in the following grounds amongst others against the impugned order dated 18.06.2019 being memo No. ৪/মূসক/পশ্চিকমিঃ-৮(৫০)ইয়াহাংসুজ/মূসকফাঁকি/বিচার/২০১৯/১৯১৪ passed by the Respondent No.1, imposing demand of VAT of BDT. 38,76,378.00/- (Taka Thirty Eight Lac Seventy Six Thousand Three Hundred Seventy Eight) only along with compensation of 2% interest until realization of the same against the appellant—

G R O U N D S

- I. For that the allegations made in the final impugned notice under section 55(3) of the Value Added Tax Act, 1991 against the appellant about non submission of VAT challans is not true because the appellant submitted all VAT challans its business in time but the respondents very illegally and malafide imposed the impugned demand upon the appellant, which is liable to be set aside.
- II. For that the respondents in the impugned final demand letter dated 18.06.2019 did not mention the period of non submission of VAT challans by the appellant, and it did not also mention that how the appellant avoided VAT against which of your income either on daily basis or weekly basis or monthly basis. As such, the impugned order is liable to be set aside for ends of justice.
- III. For that earlier on 2.04.2019 the respondents imposed fine upon the appellant under section 37 of the Value Added Tax Act, 1991 but at that time the respondents did not mention anything about evasion of VAT by the appellant; as such, the impugned order is liable to be set aside for ends of justice.
- IV. For that the respondents very illegally and arbitrarily and also without serving any prior any show cause notice visited the office of the appellant and took away all the documents, and did not clearly let the appellant know about the documents or evidences basing on which the impugned final demand notice dated 18.06.2019 was issued upon the appellant, which is violative of the fundamental rights as well as the principle of natural justice of the appellant. As such, the impugned order is liable to be set aside for ends of justice.
- V. For that the respondents acted very arbitrarily while making demand on the basis of documents about which the appellant had no proper knowledge, and those documents were not verified with the true and authentic document of the appellant; as such, the impugned order is liable to be set aside for ends of justice.
- VI. For that the respondents acted malafide and arbitrarily taking view in the impugned notice that the appellant failed to submit any documents at the time of hearing, but the respondents are claim that they have made demand under section 55(3) on the basis of the documents recovered from the office of the appellant, which means that the respondents have acted malafide and unfairly. Hence, the impugned demand made by the respondents has no basis at all. As such, the impugned order is liable to be set aside for ends of justice.
- VII. For that the impugned demand under section 55(3) is absolutely erroneous and bad in law and fact as well. The same was made without any cogent reason and any reliable documentary evidences. As such, the impugned order is liable to be set aside for ends of justice.

Wherefore, it is most humbly prayed that your honour would graciously be pleased to admit this appeal, to call upon the respondents to show cause as to why the Impugned order dated 18.06.2019 being memo No. 8/মুসক/পশ্চিকমিঃ-

৮(৫০)ইয়াহাংসুজ/মূসকফাঁকি/বিচার/২০১৯/১৯১৮ passed by the Respondent No.1, imposing demand of VAT of BDT. 38,76,378.00/- (Taka Thirty Eight Lac Seventy Six Thousand Three Hundred Seventy Eight) only along with compensation of 2% interest until realization of the same against the appellant should not be set aside;

AND

Pending hearing of the appeal, stay further operation of impugned order dated 18.06.2019 being memo No. ৪/মূসক/পশ্চিমকমিঃ-৮(৫০)ইয়াহাংসুজ/মূসকফাঁকি/ বিচার/ ২০১৯/১৯১৮ passed by the respondent No.1 and/or pass such other order or further order or orders as to your lordships may deem fit and proper.

And for this act of kindness, your petitioner, as in duty bound shall ever pray.

Signature of the Representative

CHAPTER 18

Incorporation of Company

“Company” means a company formed and registered under this Act or an existing company.¹ There are companies limited by shares and limited by guarantee. Companies limited by shares are of two types, private limited² and public limited³. Two or more persons can form a private limited company by shares. Seven or more persons can form public limited company by shares. They can also form companies limited by guarantee. These persons can be natural or juristic having the capacity to enter into contract. Now-a-days, one person can also form a company. Mode of forming companies is provided under Section 5 which reads out as follows—

“Any seven or more persons or, where the company to be formed will be a private company, any two or more persons associated for any lawful purpose may, be subscribing their names to a memorandum of association and otherwise with the requirements of this Act in respect or registration form an incorporated company, with or without limited liability, that is to say, either—

- (a) a company limited by shares, that is to say, a company having the liability of its member limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them; or
- (b) a company limited by guarantee, that is to say, a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the assets of the company on the event of its being wound up; or
- (c) an unlimited company, that is to say, a company having no limit on the liability of its members.

In the case of a company limited by shares, each subscriber of the memorandum shall take at least one share and write opposite to his name the number of shares he takes. The memorandum shall state⁴ —

-
1. Section 2(1)(Gha) of the Companies Act, 1994 provides that “কোম্পানী” বলিতে এই আইনের অধীনে গঠিত এবং নিবন্ধিত কোন কোম্পানী বা কোন বিদ্যমান কোম্পানীকে বুঝাইবে.
 2. Section 2(1)(Ta) of the Companies Act, 1994 provides that “প্রাইভেট কোম্পানী” বলিতে এমন কোম্পানীকে বুঝাইবে যাহা উহার সংঘবিধি দ্বারা—
 - (অ) কোম্পানীর শেয়ার, যদি থাকে, হস্তান্তরের অধিকারে বাধা-নিষেধ আরোপ করে;
 - (আ) কোম্পানীর শেয়ারে বা ডিবেঞ্চারে যদি থাকে, চাঁদা দানের নিমিত্ত (subscription) জনসাধারণের প্রতি আমন্ত্রণ জানানো নিষিদ্ধ করে; এবং
 - (ই) ইহার সদস্য-সংখ্যা কোম্পানীর চাকুরীতে নিযুক্ত ব্যক্তিগণ ব্যতীত, পঞ্চাশের মধ্যে সীমাবদ্ধ রাখে :
তবে শর্ত থাকে যে, যদি দুই বা ততোধিক ব্যক্তি যৌথভাবে কোন কোম্পানীর এক বা একাধিক শেয়ারের ধারক (shareholder) হন, তাহা হইলে তাহারা, এই সংজ্ঞার উদ্দেশ্য পূরণকল্পে, একজন সদস্য বলিয়া গণ্য হইবেন.
 3. Section 2(1)(Nio) of the Companies Act, 1994 provides that “পাবলিক কোম্পানী” বলিতে এই আইন বা এই আইন প্রবর্তনের অব্যবহিত পূর্বে বলবৎ কোন আইনের অধীনে নিগমিত (incorporated) এমন কোন কোম্পানীকে বুঝাইবে যাহা প্রাইভেট কোম্পানী নহে.
 4. Section 6 of the Companies Act, 1994.

- (i) the name of the company, with “limited” as the last word in its name;
- (ii) The address of the registered office;
- (iii) the objects of the company, and, except in the case of trading companies, the territories to which they extend;
- (iv) that the liability of the members is limited;
- (v) the amount of share capital with which the company proposes to be registered, and the divisions thereof into shares of a fixed amount;

In the case of a company limited by guarantee, each subscriber has a share capital. Each subscriber of the memorandum shall take at least one share and write opposite to his name the number of shares he takes. The memorandum shall state⁵ —

- (i) the name of the company, with “limited” as the last word in its name.
- (ii) the address of the registered office;
- (iii) the objects of the company, and, except in the case of trading companies, the territories to which they extend;
- (iv) that the liability of the members is limited;
- (v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the charges and expenses of winding up, and for adjustment of the right of the contributories among themselves, such amount as may be required, not exceeding a specified amount;

In the case of an unlimited company, each subscriber of the memorandum shall take at least one share and each subscriber shall write opposite to his name the number of shares he takes. The memorandum shall state⁶ —

- (i) the name of the company;
- (ii) the address of the registered office of the company;
- (iii) the objects of the company and, except in the case of trading companies, the territories to which they extend.

Section 28 provides provision for dispensing with the word ‘limited’ in case of charitable and other companies. These companies are different from the companies who are formed for charitable or social welfare purposes. Section 28 provides that—

“(১) যদি সরকারের নিকট সন্তোষজনকভাবে প্রমাণিত হয় যে, সীমিতদায় কোম্পানী হিসাবে গঠিত হওয়ারযোগ্য কোন সমিতি বাণিজ্য, কলা, বিজ্ঞান, ধর্ম, দাতব্য বা অন্য কোন উপযোগিতামূলক উদ্দেশ্যের উন্নয়নকল্পে গঠিত হইয়াছে অথবা গঠিত হইতে যাইতেছে এবং যদি উক্ত সমিতি উহার সম্পূর্ণ মুনাফা বা অন্যবিধ আয় উক্ত উদ্দেশ্যের উন্নতিকল্পে প্রয়োগ করে বা প্রয়োগ করার ইচ্ছা প্রকাশ করে এবং উহার সদস্যগণকে কোন লভ্যাংশ প্রদান নিষিদ্ধ করে, তবে সরকার উহার একজন সচিবের

5. Section 7 of the Companies Act, 1994.

6. Section 8 of the Companies Act, 1994.

অনুমোদনক্রমে প্রদত্ত লাইসেন্সের মাধ্যমে এই মর্মে নির্দেশ দিতে পারিবে যে, উক্ত সমিতির নামের শেষে “সীমিতদায়” বা “লিমিটেড” শব্দটি যোগ না করিয়াই উহাকে একটি সীমিতদায় কোম্পানী হিসাবে নিবন্ধিত করা হউক, এবং অতঃপর উক্ত সমিতিকে তদনুযায়ী নিবন্ধিত করা যাইতে পারে।

- (২) এই ধারার অধীন লাইসেন্স প্রদানের তেগত্রে সরকার যেরূপ উপযুক্ত মনে করে সেইরূপ শর্ত ও বাধা-নিষেধ সাপেক্ষে লাইসেন্স প্রদান করিতে পারে, এবং এইরূপ শর্ত ও বাধা-নিষেধ আরোপ করা হইলে উহা মানিয়া চলিতে উক্ত সমিতি বাধ্য থাকিবে এবং সরকার নির্দেশ প্রদান করিলে সংঘস্মারক ও সংঘবিধিতে অথবা ঐ দুইটির যে কোন একটিতে ঐগুলি সন্নিবেশিত করিতে হইবে।
- (৩) নিবন্ধনের পর উক্ত সমিতি সীমিতদায় কোম্পানীর সকল সুযোগ সুবিধা ভোগ করিবে এবং একটি সীমিতদায় কোম্পানীর যে সকল দায়-দায়িত্ব থাকে উক্ত সমিতিরও তাহা থাকিবে, তবে উহার নামের অংশ হিসাবে “সীমিতদায়” বা “লিমিটেড” শব্দটি ব্যবহার করিতে তৎসহ অথবা উহার নাম প্রকাশ করিতে অথবা রেজিস্ট্রারের নিকট সদস্যগণের তালিকা প্রেরণ করিতে অন্যান্য সীমিতদায় কোম্পানীর মত বাধ্য থাকিবে না।
- (৪) সরকার এই ধারার অধীনে প্রদত্ত লাইসেন্স যে কোন সময়ে বাতিল করিতে পারে এবং তাহা করা হইলে রেজিস্ট্রার নিবন্ধন-বহিতে উক্ত সমিতির নামের শেষে “সীমিতদায়” বা “লিমিটেড” শব্দটি লিপিবদ্ধ করিবেন এবং উক্ত সমিতি এই ধারা বলে প্রদত্ত অব্যাহতি ও অতিরিক্ত সুযোগ-সুবিধা আর ভোগ করিতে পারিবে না :

তবে শর্ত থাকে যে, অনুরূপভাবে কোন লাইসেন্স বাতিল করার পূর্বে, সরকার সংশ্লিষ্ট কারণ উল্লেখপূর্বক স্বীয় অভিপ্রায় সম্পর্কে সমিতিকে লিখিতভাবে নোটিশ প্রদান করিবে, এবং উক্ত বাতিলকরণের বিরুদ্ধে সমিতির বক্তব্য পেশ করার জন্য উহাকে পর্যাপ্ত সুযোগ দান করিবে।”

Companies incorporated with the purpose of doing charitable or social works and other things which are not for commercial or business purposes can be formed under Sections 28 and 29 of the Companies Act. Generally, Club, Alumni Association, Society, Research Institute and other kind of organizations/ institutions are formed under these Sections. Section 29 provides that—

- “(১) কোন কোম্পানী গ্যারান্টি দ্বারা সীমিতদায় কোম্পানী হইলে এবং উহার কোন শেয়ার-মূলধন না থাকিলে এবং এই আইন প্রবর্তনের পরে উহা নিবন্ধিত হইলে উক্ত কোম্পানীর সংঘস্মারক বা সংঘবিধির কোন বিধানে কিংবা কোম্পানীর কোন সিদ্ধান্তে, কোন ব্যক্তির সদস্য হওয়া ব্যতীত অন্য কোন কারণে, তাহাকে কোম্পানীর বন্টনযোগ্য মুনাফা লাভের অধিকার প্রদান করা যাইবে না এবং তাহা করা হইলে উক্ত বিধান বা সিদ্ধান্ত বাতিল বলিয়া গণ্য হইবে।
- (২) গ্যারান্টি দ্বারা সীমিতদায় কোম্পানীর সংঘস্মারক সংক্রান্ত এই আইনের অন্যান্য বিধানাবলী এবং এই ধারার উদ্দেশ্য পূরণকল্পে, এই আইন প্রবর্তনের পরে নিবন্ধিত এবং গ্যারান্টি দ্বারা সীমিতদায় সম্পন্ন কোন কোম্পানীর সংঘস্মারকে বা সংঘবিধিতে কিংবা কোন সিদ্ধান্তে যদি এমন বিধান থাকে যে, তদ্বারা উক্ত কোম্পানীর গৃহীত উদ্যোগকে (Undertaking) শেয়ার বা স্বার্থাধিকাররূপে বিভক্ত করা হইয়াছে বলিয়া বিবেচনা করা যায়, তবে এই উদ্যোগ, উক্ত বিধান দ্বারা সুনির্দিষ্ট সংখ্যক টাকার অংকে শেয়ার বা স্বার্থাধিকাররূপে প্রকাশিত না হওয়া সত্ত্বেও, উক্ত কোম্পানীর শেয়ার-মূলধন হিসাবে গণ্য হইবে।”

Sample**THE COMPANIES ACT, 1994**
(ACT XVIII OF 1994)**(A PRIVATE COMPANY LIMITED BY SHARES)****MEMORANDUM OF ASSOCIATION****OF****ABCDE LIMITED**

- I. The name of the company is **ABCDE LIMITED**.
- II. The registered office of the company shall be situated in Bangladesh.
- III. The objects for which the Company is established are all or any of the following provided that all the object will be implemented after obtaining necessary permission from the Government/ concerned authority /competent authority before commencement of business:
 1. To manufacture, grow, distribute, make, supply, store, advertise and do all kinds of business of kinds of food products and other human consumable items like rice, lentil, peas, wheat, bread, butter, cooked foods, baked foods, natural vegetables, manufactured food products and items, etc and their derivative products.
 2. To establish, maintain and manage modern Automatic Rice Mill in anywhere of Bangladesh and To set up and operate Flour Mills, Automatic Flour Mills, Oil Mills, Automatic Oil Mills, Dal Mills, Automatic Dal Mills for the purpose of Manufacturing, Supplying, Marketing and any other allied trade of all and descriptions and To carry on the business of Rice, Rice husking, Chilly, Atta, Maida, Suji, Set Vegetables, Fruits and ail kinds of food Import, Export, Distributes, Marketing and To carry on the business of all kinds Plantation of Oil Seeds, Pulm Seeds, Mastered Seeds all kinds of Firming and Processing of the same which may be required for the purposes of any of the business.
 3. To import all sorts of machinery and equipment necessary for establishment and maintenance of modern feed mills to produce feed for poultry, fish, shrimp, cattle and others and to set up and establish a feed manufacturing plant which will produce or prepare raw material for poultry feed, dairy feed, fish feed and shrimp feed.
 4. To cultivate, tea, coffee, cinchona, rubber, all kinds of fruits, vegetables, flowers and trees and to carry on the business of tea planters in all its branches, to carry on and work the business of cultivators, winnowers and buyers of every kind of fruits, dried or otherwise vegetables, flowers, mineral to prepare, manufacture and render marketable any such produce and to sell, dispose of and deal in any such produce, either in its prepared, manufactured or raw state and either by wholesale or retail.

5. To set up and establish modern feed mills for production of polluted and mesh feed for poultry, fish, shrimp/prawn cattle agro based, Poultry, dairy Fisheries, agro based industries for production of fertilizer, Bio chemical seeds, pesticide, agriculture machineries & others. To import all sorts of machinery and equipment necessary for establishment and maintenance of modern feed mills for production of pelleted and mesh feed for poultry, fish, Spirulina Culture, shrimp, cattle and others.
 6. To cultivate, plant, produce, formulate, grow, harvest, buy, sell, import, export or otherwise deal in all kinds of Agriculture produces, garden produces, herbal produces, forest produces, cash crops produces, vegetables, fruits, flowers, flower bulbs, seeds, marine and animal produces and their derivatives and by-products and to do horticulture, floriculture, on land acquired through purchase, lease, hire purchase, exchange or otherwise and to carry on all or any of the business of fruits, vegetables, spices, wood, cash crops, seasonal crops and provisions of all kinds, growers of & dealers in corn, hay, and straw, seeds men, and nursery men and to buy, sell, manufacture, and trade in any goods usually traded in any of the above business or any substitute for any of them associated with the farming interests.
 7. To attain the business objectives of the Company, the Company can enter into partnership, joint-venture, merge, take-over, acquire or amalgamation with any other Company/Firm/Institution and also to take loans from bank/financial institutions/any other organizations in such manner as the Company thinks fit and proper and also to mortgage the property and assets of the Company as securities for loans and/or any credit facilities either to procure for itself or to be given to any associate company or companies or third party and also to give guarantees securing its own and/or liabilities of such associate company or companies and/or third party.
- IV. The liability of the members is limited by shares.
- V. The authorized share capital of the Company is **Tk. 2,00,00,000/- (Two Crore) divided into 2,00,000 (Two Lac) ordinary shares of Tk. 100/- (One Hundred)** each. The Company shall have the power to increase or decrease the said shares capital and to issue any part of its Capital, original or increased, with or without preference or priority or special privilege or subject to any condition or restrictions and to vary, modify, or abrogate and such preference, priority, privileges, rights conditions or restrictions, so that unless the conditions of issue shall otherwise expressly declare every issue of shares whether declared to be preference or otherwise shall be subject to the powers herein before contained.

We, the several persons, whose names, address and descriptions are subscribed below are desirous of being formed into a Private Limited Company in pursuance with this **Memorandum of Association** and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names :

Sl. No.	Name	Position	Number of Shares of Taken	Signature of Subscribers
01	Name: Md. Shimul Khan S/O.: Md. Hazratul Islam Mother's: Fatema Begum Address: 45/A, 2 nd Colony, Magar Road, P.S-Darussalam, Section-1, Mirpur, Dhaka. Date of Birth: 27/11/1982 TIN: 413027809543 ID: 2804542337 E-mail: info@ABCDE.ltd Mob: +880 17 1641 1634 Business, Bangladeshi.	Chairman	8,000 (Eight Thousand) shares	
02	Name: Minhajul Khan S/O.: Nazmul Khan Mother's: Moluda Khatun Address: House-13, Road-02, Block-F, Banani Model Town, Dhaka. Date of Birth: 24/02/1973 TIN: 668832257361 ID : 4604518021 E-mail: info@ABCDE.ltd Mob: +880 17 13093580 Business, Bangladeshi.	Managing Director	2,000 (Two Thousand) shares	
		Total	10,000 (Ten Thousand) Shares	

Dated the 19th day of September 2018.

Witness to the Signatures of the subscribers.

THE COMPANIES ACT, 1994
(ACT XVIII OF 1994)

(A PRIVATE COMPANY LIMITED BY SHARES)

ARTICLES OF ASSOCIATION

OF
ABCDE LIMITED

1.0. PRELIMINARY

- 1.1. The Regulations contained in the Schedule-1 to Companies Act, 1994 with respect to such provisions as are applicable to a private limited company shall apply so far only as they are not negated by or are not contained in the following Articles or any other Articles that may from time to time be framed by the Company.

2.0. INTERPRETATION

- 2.1. Under this article unless there be something repugnant in the subject matter inconsistent therewith :

“Articles” means the Articles of Association of the Company as originally hereby framed or as altered from time to time by special resolution with prior permission from proper authority.

“Auditor” means the person for the time being performing the duties of the auditor of the Company.

“Board of Directors” means the Board of Directors of the Company for the time being.

“Business Day” means a day on which banks are open for business in Bangladesh and India.

“Chairman” means the Chairman of the Board of Directors of the Company for the time being.

“Company” or “This Company” means ABCDE LIMITED.

“Companies Act” or “the Act” means the Companies Act, 1994 or any modification or re-enactment thereof for the time being in force.

“Debentures” include debenture stock.

“Directors” means the Directors of the Company including (where the context so admits or requires) Alternate Directors for the time being.

“Dividend” includes bonus shares.

“Financial Year” means such period in respect which any profit and loss account of the Company laid before the Company in an Annual General Meeting is made up as the Board shall determine, whether that period is a year or not.

“General Meeting” means a meeting of the Members.

“Government” means the Government of the People’s Republic of Bangladesh.

“In writing” or “written” includes printing, typewriting, lithography and any other mode of representing or reproducing words in visible form.

“Managing Director” means the Managing Director of the Company.

“Month” means calendar month according to the English Calendar.

“Office” means the registered office for the time being of the Company.

“Person” includes a body, body corporate, firm association, corporation, company as well as an individual.

“Proxy” includes attorney duly constituted or appointed under an instrument of Power of Attorney, proxy or other authority in writing.

“Register” means the Register of Members to be kept pursuant to Companies Act, 1994.

“Seal” means the Common Seal of the Company.

“Secretary” means any person, firm or Company appointed to perform the duties of the Secretary or of the Company.

“Shares” means for the time being the capital of the Company.

“Special Resolution” or “Extra-ordinary Resolution” shall have the same meaning assigned thereto respectively in Section 87 of the Companies Act.

“Registrar” means the Registrar, Deputy Registrar or Assistant Registrar of Joint Stock Companies.

Words importing the persons shall include bodies, corporate and unincorporated, and the government.

Words importing the singular number shall include the plural, and vice versa.

3.0. PRIVATE COMPANY

3.1. The Company is a private limited Company within the meaning of section 2(1)(q) of the Companies Act, 1994 and accordingly

- i) no invitation shall be made to the public to subscribe for any share, debenture or debenture stock of Company,
- ii) the number of the members of the Company (exclusive of the persons in employment of the Company) shall be limited to fifty, provided that for the purpose of this provision where two or more persons hold one or more shares jointly in the Company they shall be treated as a single member and
- iii) the right to transfer shares in the Company be restricted in the manner and to the extent hereinafter appearing.

4.0. BUSINESS

4.1. The business of the Company shall include all or any of the objects expressed in the Memorandum of Association and may commence immediately upon incorporation of the Company, and notwithstanding that part of the capital has been subscribed.

5.0. SHARE CAPITAL

- 5.1. The authorized share capital of the company shall be such amounts and be divided into such shares as may, from time to time, be provided in Clause V of the Memorandum of Association with power to increase, reduce or repay the capital or any portion thereof and to divide the shares of the company from time to time into several classes and to attach thereto respectively any preferential, deferred qualified or other special rights privileges or conditions and upon the subdivision or consolidation of any share or shares to apportion the rights to participate in profits in any manner as between the shares resulting from subdivision as may be prescribed by the Articles of Association of the Company.
- 5.2. Subject to provisions of Section 155 of the Act, and terms of any extraordinary resolution of the Company, the shares shall be under the control of the Directors but the transfer and transmission thereof shall be guided by the provisions laid down in these presents.
- 5.3. The joint holders of a share shall be severally as well as jointly liable for the payment of all installments and calls due in respect of such share and for all incidents thereof according to the Company's regulations.
- 5.4. Save as herein otherwise provided, the Company shall be entitled to treat the person whose name appears on the Register of Members as the holder of any share as the absolute owner thereof and accordingly shall not, except as ordered by a Court of competent jurisdiction or as by law required, be bound to recognize any trust or equity or equitable, contingent or other claim to or interest in such share on the part of any other person whether or not it will have expressed or implied notice thereof.
- 5.5. Subject to the provisions if any in that behalf of the Memorandum of Association of the Company any share of the Company may be issued with such preference, deferred or other special rights or such restrictions whether in regard to dividend, voting, return of share capital or otherwise as the Company may from time to time by special resolution determine and any preference share may with the sanction of special resolution be issued on the terms that it is or at the option of the Company is liable to be redeemed.
- 5.6. Neither of the shareholders shall, except with the prior written consent of the other, create or permit to subsist any pledge, lien or charge over, or grant any option or other rights or dispose of any interest in, all or any of the shares held by if (otherwise than by a transfer of such shares in accordance with the provisions of this Articles of Association) and any person in whose favour any such pledge, lien, or charge is created or permitted to subsist or such option or rights are granted or such interest is disposed of shall be subject to and bound by the same limitations.
- 5.7. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of all the shareholders of the issued shares of that class.
- 5.8. Any application signed by or on behalf of an applicant for shares in the Company followed by an allotment of any shares therein, shall be acceptance of such shares within the meaning of these presents and every person who thus or otherwise accepts any shares and whose name is on the Register of Members shall for the purposes of these presents, be a member.

- 5.9. The Directors shall, on conveyance to the proposed allottee intimation of the allotment of any shares being made by them, require or direct the money to be paid by way of deposit call or otherwise in respect of any such shares proposed to be allotted by them, shall, immediately on receipt of such intimation by the allottee, become a debt to and recoverable by the Company from the proposed allottee thereof and shall be paid for accordingly unless the proposed allottee within forty-eight (48) hours of receipt of intimation of allotment, advises the Directors about the withdrawal of his application thereof.
- 5.10. Subject to these presents, the Directors may allot and issue shares in the capital of the Company as payment or part payment of any property or goods purchased or for machinery supplied or services rendered to the Company and shares so allotted shall be issued as fully paid-up shares.

6.0. SHARE REGISTER

- 6.1. The Company shall keep a Register of Members and an Index of Members in accordance with Sections 34 and 35 of the Act, in which shall be entered the name, address, occupation and nationality of every member of the Company, and such address shall be deemed to be its/his/her place of business/residence to which all letters and notices from the Company shall be sent. The Company shall not be liable for the non-receipt of notice or letters, non-payment of dividend or for any other matter due to the change of the address of any member unless such change is notified in writing to the Company.
- 6.2. The Register of Members and the Index of Members shall be open to inspection by a member of the Company without charge and by any other person duly approved by the Board of Directors on payment of such charge as may be fixed by the Board. Any member or other person aforesaid may take extract therefrom on payment of such charges as may be fixed by the Board.

7.0. SHARE CERTIFICATE

- 7.1. The certificate of title to shares and debentures shall be issued under the common seal of the Company and signed by two Directors of the Company.
- 7.2. Every member shall be entitled, free of charge, to one certificate for all the shares registered in his name. If any member shall required additional certificates, he shall pay for each additional certificate such sum as the Directors shall determine. Provided that in case of share(s) held jointly by several persons, the Company shall not be bound to issue more than one certificate therefor and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all. Every certificate of share shall specify the number and denoting numbers of the shares in respect of which it was issued and the amount paid-up thereon.
- 7.3. (a) If a share certificate be worn-out, defaced, lost or destroyed it may be reissued on payment of such fee as determined by the Directors and on such terms as to evidence and indemnity as the Directors think fit.

- (b) When a new Share Certificate has been issued in pursuance of clause (a) of this Article, it shall state on face of it and against the stub or counterfoil to the effect that it is "Duplicate issued in lieu of Share Certificate No. ."
- 7.4. The certificate of shares registered in the names of two persons shall be delivered to the person first named on the Register.

8.0. LIEN AND FORFEITURE

- 8.1. The Company shall have a lien on every share (not being a fully paid up share) for all monies (whether presently payable or not) called for payable at a fixed time in respect of that share, and the Company shall also have a lien on all shares (other than fully paid up shares) standing registered in the name of a person (whether jointly or individually) for all monies may at any time declare any shares to be wholly or in part except from the provisions of this clause.
- 8.2. If any member fails to pay any call or installment on or before the day appointed for the payment of the same, the Directors may at any time thereafter during such time as the call or installment remains unpaid, serve a notice on such member requiring him to pay the same together with any interest that may have accrued all expenses that may have been incurred by the Company by reason of such non-payment.
- 8.3. The notice shall name a day (not being less than fourteen days from the date of the notice) and a place or places on and at which such call or installment and such interests and expenses as aforesaid are to be paid. The notice shall also state that in the event of non-payment at or before the time at the place appointed, the shares in respect of which such call was made or installment is payable will be liable to be forfeited.
- 8.4. If the requirements of any such notice as aforesaid are not complied with, any of the shares in respect of which such notice has been given, may at any time thereafter before payment of all calls or installments, interest and expenses due in respect thereof, be forfeited, by a resolution of the Board of Directors to that effect.
- 8.5. When any share shall have been so forfeited, notice of the resolution shall be given to the member in whose name it stood immediately prior to the forfeiture or to the persons entitled to the share by transmission, as the case may be and an entry of the forfeiture with the date thereof shall forthwith be made in the Register but no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as aforesaid.
- 8.6. Any shares so forfeited shall be deemed to be the property of the Company and the Directors may sell, re-allot or otherwise dispose of the same in such manner as they think fit.
- 8.7. The Directors may at any time before any share so forfeited shall have been sold, re-allotted or otherwise disposed of, annul the forfeiture thereof upon such condition as they think fit.

- 8.8. Any member whose shares have been forfeited shall notwithstanding be liable to pay and shall forthwith pay to the Company all calls, installment, premiums and expenses, owing upon or in respect of such shares at the time of forfeiture, from the time of forfeiture until payment at ten percent per annum, and the Directors may enforce the payment thereof, without any deduction or allowance for the value of the shares at the time of forfeiture, but shall not under any obligation to do so.
- 8.9. The forfeiture of any share shall involve the extinction of all interest in and also of all claims and demands against the Company in respect of the share, and all other rights incident to the share, except only such of those rights as by these Articles are expressly saved.
- 8.10. A duly verified declaration in writing that the declarant is a Director of the Company, and that certain shares in the Company have been duly forfeited, on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the shares and such declaration together with the certificate of title to the shares under the seal delivered to a purchaser or allottee thereof, shall constitute a good title to such shares, and the person to whom the shares are sold shall be registered as the holder of such shares and shall not be bound to see to the application of the purchase money, nor shall his title to such shares be affected by any irregularity or invalidity in the proceedings in reference to such forfeiture, sale or disposition.
- 8.11. The Company shall have a first and paramount lien upon all shares, other than fully paid up shares, registered in the name of each member (whether solely or jointly with others) and upon the proceeds of sale thereof for all moneys called or payable at a fixed time in respect of such shares (whether by such member solely or jointly with any other person) whether the due date for the payment thereof shall have actually arrived or not and no equitable interest in any share shall be created except upon the footing and condition as provided hereinbefore. Unless otherwise agreed, the registration of a transfer of shares shall operate as a waiver of the Company's lien, if any, on such shares.
- 8.12. For the purpose of enforcing such lien the Directors may sell the shares subject thereto in such manner as they think fit, but no sale shall be made until such fixed time as aforesaid shall have arrived, and until notice in writing of the intention to sell shall have been served on such member, his executors or administrators, or other legal representatives, if any default shall have been made by him or them in the payment, fulfillment or discharge of such debts, liabilities or engagements for seven days after such notice.
- 8.13. The net proceeds of any such sale shall be applied in or towards satisfaction of the debts, liabilities, or engagements of such member and residue, if any, paid to such members, his executors, administrators, or other legal representatives, provided always that the Company shall be entitled to a lien upon such residue in respect of any debts, liabilities or engagements the due date for the payment or discharge whereof shall have not arrived like to that which it had upon the shares immediately before the sales thereof.
- 8.14. Upon any sale after forfeiture or for enforcing a lien in purported exercise of the powers hereinbefore given, the Directors may appoint some persons to execute an instrument of

transfer of the shares sold and cause the purchasers name to be entered in the Register in respect of the shares sold, and the purchaser shall not be bound to see the regularity of the proceeding nor to the application of the purchase money, and after his name has been entered in the Register in respect of such shares his title to such shares shall not be affected by any irregularity or invalidity in the proceedings in reference to such forfeiture, sale or disposition nor be impeached by any person, and remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

- 8.15. Where any shares under the power in that behalf herein contained are sold by the Directors and the certificate thereof has not been delivered to the Company by the former holder of the said shares, the Directors may issue a new certificate for such shares distinguishing it in such manner as they may think fit from the certificate not so delivered.

9.0. INCREASE, REDUCTION AND ALTERATION OF CAPITAL

- 9.1. The Company in General Meeting may from time to time by ordinary resolution increase its authorized capital by such sum to be divided into shares of such amounts as the resolution shall prescribe. Provided that the Board may increase the paid-up share capital of the Company up to the authorized share capital.
- 9.2. The new shares may be issued upon such terms and conditions and with such rights and privileges annexed thereto as the resolution creating the same shall direct, and if no direction be given, as the Directors shall determine, and in particular such shares may, subject to any special rights for the time being attached to any existing class of shares, be issued with preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, return of capital, voting or otherwise as may from time to time be determined.
- 9.3. Except so far as otherwise provided by the conditions of issue or by these Articles any capital raised by the creation of new shares shall be considered part of original capital.
- 9.4. The Company may by ordinary resolution :
- (a) consolidate and divide all of its share capital into shares of larger amount than its existing shares;
 - (b) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its capital by the amount of the shares so canceled ; or
 - (c) sub-divide its shares, or any of them into shares of smaller amount than is fixed by the Memorandum of Association (subject, nevertheless, to the provisions of the Act), and so that the resolution whereby any share is sub-divided may determine that as between the holders of the shares resulting from such sub-division, one or more of the shares may have any such preferred or other special rights over, or may have such deferred rights, or be subject to any such restrictions as compared with the others as the Company has power to attach the unissued or new shares.
- 9.5. Subject to confirmation by the Court, the Company may by special resolution reduce its share capital in any manner authorized by the Act.

10.0. TRANSFER AND TRANSMISSION OF SHARES

- 10.1. Subject to the following provisions regarding transfer of shares, shares of the Company may be transferred at any time by a member with the sanction of the Board of Directors.
- 10.2. Should any shareholder decides to sell/transfer his/her part or full shares, first offer must be made by the transferor to the other existing shareholders on pro-rata basis who shall within the period as specified in the offer letter express his/her intention separately to purchase the shares offered for sale/transfer. In the event the other shareholders decide to exercise the option then the shares shall be transferred at a price to be decided by independent Auditor. If none of the existing shareholders agrees to purchase the share(s) offered to him/her or failed to express his/her intention within the stipulated time, the intending transferor(s) may transfer the share(s) to any other person.
- 10.3. The above procedure to offer shall not be applicable in the case of transfer of any share by any existing shareholder(s) if transferred to spouse, sons, daughters, grandsons and granddaughters of any such intending transferor of the existing shareholder(s) or any transfer under a trust.
- 10.4. The Company shall keep a Register of Transfers and therein shall fairly and distinctly enter the particulars of every transfer or transmission of any shares.
- 10.5. Subject to the provisions of Section 38(3) & 38(6) of the Act, no transfer of shares shall be registered unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and the transferee has been delivered to the Company together with the certificate or if no certificate is in existence, the letter of allotment of the shares. The instrument of transfer of any share shall specify the name and address both of the transferor and of the transferee, and the transferor shall be deemed to remain the member in respect of such share until the name of the transferee is entered in the Register in respect thereof. Each signature to such transfer shall be duly attested by the signature of one credible witness who shall add his address and occupation.
- 10.6. Application for registration of the transfer of a share may be made either by the transferor or the transferee and in case the application is made by the transferee unless objection is made by the transferor within two weeks from the date of receipt of the notice, the name of the transferee shall be entered in the Register.
- 10.7. The instrument of transfer of any share shall be in writing in the usual common form as prescribed under law.
- 10.8. No transfer shall be made to an infant or persons of unsound mind but transfer can be made to any corporate entity.
- 10.9. Every instrument of transfer shall be left at the registered office of the Company for registration accompanied by the certificate of the shares to be transferred and such other evidence as the Directors may require to prove title of the transferor or his right to transfer the shares, and upon payment of the proper fee, the transferee shall (subject to the Directors' right to decline to register as hereinafter mentioned) be registered as a member in respect of such shares. The Directors may waive the production of any certificate upon evidence satisfactory to them of its loss or destruction or otherwise.

- 10.10. If the Directors refuse to register the transfer of any shares, the Chairman shall within one month from the date on which the instrument of transfer was lodged with the Company send to the transferee and the transferor notice of the refusal.
- 10.11. All instruments of transfer, which shall be registered, shall be retained by the Company but any instrument of transfer which the Directors may decline to register shall be returned to the person depositing the same. Any instrument of transfer may be destroyed after such period as may be determined by the Board.
- 10.12. The executor(s) or administrator(s) of a deceased member (not being one of several joint-holders) shall be the only person(s) recognised by the Company as having any title to the share registered in the name of such member, and in the case of death of any one or more of the joint holders of any registered shares, the survivors shall be the only persons recognised by the Company as having any title to or interest in such shares, but nothing herein contained shall be taken to release the estate of a deceased joint holder from any liability on shares held by him jointly with any other person. Before recognising any executor or administrator the Directors may require him to obtain a Succession Certificate or Letters of Administration or other legal representation as the case may be from some competent Court in Bangladesh or any other authority having jurisdiction in the matter. Provided, nevertheless that in any case where the Directors in their absolute discretion think fit it shall be lawful for them to dispense with the production of a Succession Certificate or Letter of Administration or other legal representation upon such terms as to indemnity or otherwise as they in their absolute discretion may consider proper.
- 10.13. The Directors shall have the same right to refuse to register a person entitled by transmission to any shares or his nominee as if they were the transferee named in any ordinary transfer presented for registration.
- 10.14. Every transmission of shares shall be verified in such manner as the Directors may require and the Company may refuse to register any transmission until the same be so verified or until or unless an indemnity be given to the Company with regard to such registration which the Directors at their discretion shall consider sufficient provided nevertheless that there shall not be any obligation on the Company or the Directors to accept any indemnity.
- 10.15. On transfer or transmission of any share no fee shall be charged by the Company.
- 10.16. The Company shall incur no liability for giving effect to any transfer of shares made or purporting to be made by the apparent legal owner thereof as shown or appearing in the register of Members to the prejudice of any person having or claiming any equitable right title or interest to or in the same share, notwithstanding that the Company may have had notice of such equitable right title or interest or notice prohibiting registration of such transfer and may have entered such notice or referred thereto in any book of the Company and the Company shall not be bound or required to attend or give effect to any notice which may be given to them of any equitable right title or interest or be under any liability whatsoever for refusing or neglecting so to do though it may have been entered or referred to in some book of the Company, but the Company shall nevertheless be at liberty to regard and attend to any such notice and give effect thereto if the Directors shall so think fit.

11.0. BORROWING POWER

- 11.1. The Directors may from time to time at their absolute discretion raise or borrow any sum or sums of money for the purpose of the Company from any person, banks, firms, companies and particularly from any Director and may secure the payment of such money in such manner and upon such terms and conditions in all respects as they think fit and in particular by the issue of debentures of the Company and promissory notes or bills of exchange or giving or issuing any other security of the Company including its uncalled capital for the time being and the Directors or any of them guarantee the whole or any part of the loan or debts raised by or on behalf of the Company or any interest payable thereon with power to the Directors to indemnify the guarantees or against any liability under their guarantee by means of mortgage or hypothecation of or charge upon any property and assets of the Company movable, immovable or otherwise.

12.0. GENERAL MEETINGS

- 12.1. The first General Meeting of the Company shall be held within eighteen months from the date of incorporation of the company and thereafter subsequent General Meetings shall be held once at least in every calendar year within nine months of the expiry of the financial year of the Company at such time and place as may be determined by the Directors, provided that no interval longer than fifteen (15) months shall be allowed to elapse between two such meetings. In holding such General Meeting, the provisions of Section 183 of the Companies Act shall be complied with. Such General Meeting shall be called "Annual General Meetings" and all other meetings of the Company shall be called "Extra-Ordinary Meetings".
- 12.2. The Directors shall prepare the annual list of the Members and summary of share capital and forward the same to the Registrar of Joint Stock Companies in accordance with Section 36 of the Act.
- 12.3. The Directors shall on the requisition of the holders of not less than one-tenth of the issued share capital of the Company, upon which all calls or other sums then due have been paid forthwith proceed to call an Extra-Ordinary Meeting of the Company, in accordance with Section 84 of the Act.
- 12.4. (a) The requisition must state the objects of the meeting and must be signed by the requesters and deposited at the registered office of the Company and may consist of several documents in like form, each signed by one or more requesters. In case of joint holders of shares all such holders shall sign the requisition.
- (b) If the Directors do not proceed within 21 days from the date of the requisition being so deposited to cause a meeting to be called and held within 45 days, the requesters or a majority of them in value may themselves call the meeting but in neither case any meeting so called shall be held within three months from the date of the deposit of the requisition.
- (c) Any meeting called under this Article by the requesters shall be called in the same manner as nearly as possible as a meeting called by the Directors.

13.0. PROCEEDINGS AT GENERAL MEETINGS

- 13.1. Subject to the provisions of Section 87(2) of the Act relating to Special Resolution, at least 14 (fourteen) days' notice shall be given for holding an Annual General Meeting specifying the date, hour and place of the meeting and with a statement of the business to be transacted at the meeting.
- 13.2. At least 21 (twenty one) days' notice shall be given for holding an Extra-Ordinary General Meeting specifying the date, hour and place of the meeting and with a statement of the business, to be transacted at the meeting, and in case, it is proposed to pass an Extra-Ordinary Resolution or Special Resolution, the intention to propose such resolution as an Extra-Ordinary Resolution or Special Resolution.
- 13.3. With the consent of all Shareholders entitled to receive notice of meeting or to attend and vote at any such meeting, a meeting may be convened by shorter notice in any manner as the Shareholders think fit.
- 13.4. Any accidental omission to give notice to or non-receipt thereof by any Shareholder shall not invalidate proceeding or any resolution passed at any such meeting if the Shareholder is present or consents in writing to the action taken.
- 13.5. The Director/Shareholder shall be deemed to have been properly notified if the notice is sent to his address registered with the Company.
- 13.6. No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. The quorum at a general meeting of the shareholders shall be a minimum of 2 (two) shareholders present in person or by proxy.
- 13.7. The Chairman of the Board of Directors shall preside as Chairman at every General Meeting of the Company. In his absence or if at any meeting the Chairman is not present within half an hour after the time appointed for holding such a meeting or is unable to be present due to illness or any other cause or is unwilling so to act, the Directors shall elect one of them to act as the Chairman of the meeting and in default of their doing so the Members present shall choose one of the Directors to take the chair and if no Director is present or those present are not willing to take the chair the Members shall choose one of the Members to be the Chairman of the meeting.
- 13.8. If within half an hour after the time appointed for the holding of a General Meeting a quorum is not present the meeting if convened on the requisition of Members shall be dissolved and in every other case shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Directors may by notice to the Members appoint. If at such an adjourned meeting a quorum is not present those Members present shall form the quorum and may transact the business for which the meeting was called.
- 13.9. The Chairman with the consent of the meeting may adjourn any meeting from time to time and from place to place.
- 13.10. No business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place.

- 13.11. If a poll is duly demanded in accordance with Section 85(c)(1) of the Act, it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which poll was demanded.
- 13.12. In the case of any equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall have a second or casting vote.
- 13.13. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs.

14.0. VOTES BY MEMBERS

- 14.1. Subject to the provisions of the Act, all resolutions shall be passed by a simple majority of votes cast, however only after efforts have been made to reach consensus among the shareholders.
- 14.2. (i) Upon a show of hands every member entitled to vote and present in person or by attorney or proxy shall have one (1) vote .
(ii) Upon a poll every member entitled to vote and present in person or by attorney or proxy shall have one (1) vote for every share held by him.
- 14.3. A representative of a corporation which is a member of the Company duly authorised by a resolution of the Directors of such corporation may vote on a show of hand and on a poll as if he was an individual member of the Company. The production at the meeting of a copy of such resolution duly signed by a Director of such corporation and certified by him as being a true copy of the resolution shall be accepted by the Company as sufficient evidence of the validity of his appointment.
- 14.4. Votes may be given either personally or by attorney or by proxy through any person(s) or in the case of corporation, by a representative duly authorised as aforesaid.

15.0. VOTE BY PROXY

- 15.1. The instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney or if such appointer is a company or corporation, under its common seal or under the hand of a person duly authorised by such company or corporation in that behalf, or under the hand of its attorney who may be the appointer.
- 15.2. No person shall act as a proxy unless the instrument of his appointment and the power of attorney or other authority if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the office at least forty eight (48) hours before the time for holding the meeting at which the person named in the instrument of proxy proposes to vote and in default, the instrument appointing the proxy shall not be treated as valid.
- 15.3. No attorney shall be entitled to vote unless the power of attorney or other instrument of his appointment as attorney or a notarially certified copy thereof has been registered in the records of the Company at any time not less than forty eight (48) hours before the time of such meeting as aforesaid.

- 15.4. Notwithstanding that a power of attorney or other authority has been registered in the records of the Company the Directors may by notice in writing addressed to the member or the attorney at least forty eight (48) hours before the meeting require him to produce the original power of attorney or authority and unless the same is thereupon deposited with the Company, the attorney shall not be entitled to vote at such meeting unless the Directors in their absolute discretion excuse such non-production and deposit.
- 15.5. If any such instrument of appointment be confined to the object of appointment of proxy or substitute for voting at the meeting of the Company, it shall remain permanently or for such time as the Directors may determine in the custody of the Company and, if embracing other objects a copy thereof, examined with the original shall be delivered to the Company to remain in the custody of the Company.
- 15.6. Every instrument of proxy whether for a specified meeting or otherwise shall, as nearly as circumstances will admit be in the form or to the effect following:

16.0. ABCDE LIMITED

"I/We of being a Member of ABCDE LIMITED hereby appoint as my/our proxy to vote for me/us and on my/our behalf at the (Ordinary or Extraordinary, as the case may be) General Meeting of the Company to be held on the day of and at any adjournment thereof.

In witness my/our hand this day of 20.....

- 16.1. No objection shall be made to the validity of any vote except at the meeting or poll at which such vote shall be tendered and every vote whether given personally or by proxy not disallowed at such meeting or poll shall be deemed valid for all purposes whatsoever of such meeting or poll.
- 16.2. The Chairman of any meeting shall be the sole judge of the validity of every vote tendered at such meeting. The Chairman present at the taking of a poll shall be the sole judge of the validity of every vote tendered at such poll.
- 16.3. Any member whose name is entered in the Register of Members of the Company shall subject to these presents at all General Meetings of the Company enjoy the same rights and be subject to the same liabilities as all other members.

17.0. MINUTES OF MEETINGS

- 17.1. Minutes shall be made in the books provided for the purpose of recording resolutions and proceedings at General meetings and any such minutes if signed by the person who shall preside as chairman at the next succeeding meeting shall be receivable as evidence of the facts therein stated without further proof.
- 17.2. The books containing the minutes of proceedings of General Meeting shall be open to inspection of members during business hours subject to such reasonable restrictions as the Company may from time to time impose so that not more than 2 (two) hours in each day be allowed for inspection of any member without charge.

18.0. DIRECTORS

- 18.1. Unless otherwise determined by the Company in a General Meeting, the number of Directors shall be not less than two and not more than eleven.
- 18.2. The share qualification for becoming a Director shall be the holding of at least 1 (one) share of Tk. 100 (one Hundred) each except for a Director nominated by a lender or any loan giving bank or financial institution or agency.
- 18.3. The following persons shall be first directors of the Company :
 - (i) Md. Aynul Khan and
 - (ii) Minhajul Khan
- 18.4. The nominee Directors shall hold at least one share each in his name in compliance of Regulation 71 of Schedule I of the Act.
- 18.5. The right of nomination shall include the right by shareholder to remove at any time from office such person nominated as Director and to appoint another person in his place as Director.

19.0. ALTERNATE DIRECTOR

- 19.1. Subject to Section 101 of the Act, the Directors shall at the request of any Director (hereinafter called the “Original Director”) during his absence from Bangladesh appoint as his Alternate the person nominated by the Original Director and such appointment shall have effect from the date of nomination of the Alternate Director by the Original Director and the former shall while he holds office as Alternate Director be entitled to notice of meetings of the Directors and in the absence of the Original Director to attend and vote thereat and shall ipso facto vacate office if and when the Original Director returns to Bangladesh and any appointment or removal under this Article of an Alternate Director shall be effected by the Directors upon the request in writing to the Board under the hand of the Original Director whom the Alternate Director is to represent or represents.

20.0. DIRECTORS’ REMUNERATION

- 20.1. Each Director shall be paid out of the funds of the Company by way of remuneration such sum as may be decided by the Board of Directors from time to time for attending each meeting of the Board of Directors.

21.0. EXPENSES

- 21.1. The Company may repay to any director all such reasonable expenses as he may incur in attending and returning from meetings of the Board of the directors or general meetings, or which he may otherwise incur in or about the business of the Company, or may pay to any director such allowances as the Board think proper in respect of such expenses.

22.0. CASUAL VACANCY

- 22.1. The Board of Directors shall have power at any time and from time to time to appoint any person as a Director to fill in a casual vacancy occurring in the Board of Directors, but the person so appointed shall be subject to retirement at the same time as if he had become Director on the day on which the Director in whose place he is appointed was last elected a Director.

23.0. ADDITIONAL DIRECTOR

- 23.1. Directors shall have power at any time and from time to time to appoint any person as an additional Director of the company but the total number shall not at any time exceed the maximum number fixed as above. Any Director so appointed shall hold office only until the next following Annual General Meeting of the Company and he shall be eligible for re-election.

24.0. VACATING OFFICE OF DIRECTOR

- 24.1. The office of a Director shall be vacated if :
- (i) the Director or the shareholders whom he represents fail to obtain within the time specified in sub-section (1) of Section 97 of the Act or at any time thereafter the share qualifications, if any, necessary for his appointment; or
 - (ii) he is found to be of unsound mind by a court of competent jurisdiction; or
 - (iii) he is adjudged an insolvent; or
 - (iv) he or any firm of which he is a partner or any private company of which he is a Director without the sanction of the company in the General Meeting accepts or holds any office of profit under the Company other than that of legal or technical advisor or banker; or
 - (v) he absents himself from three consecutive meetings of the Directors or from all meetings of the Directors for a continuous period of three months whichever is longer without leave of absence from the Board of Directors; or
 - (vi) acts in contravention of Section 105 of the Act; or
 - (vii) resigns office by notice in writing addressed to the Company or to the Board of Directors; or
 - (viii) if a Director is removed for any reason whatsoever by the shareholder who nominated him.

25.0. CHAIRMAN

- 25.1. The Chairman of the Board of Directors shall be elected by the Board of Directors. Md. Aynul Khan shall be the first Chairman of the Company until such time as may be decided by the Directors. He shall preside as Chairman in every Board Meeting and at every general meeting.

26.0. MANAGING DIRECTOR

- 26.1. That Managing Director shall be the chief executive of the Company. The Board of Directors shall appoint the Managing Director. The first Managing Director of the Company shall be Minhajul Khan.
- 26.2. The initial term of the Managing Director shall be for a period of 5 (five) years unless otherwise decided by the Board. This term may be extended by the shareholders in general meeting. The Board of Directors may remove the Managing Director from his office at any time.

- 26.3. The Managing Director shall exercise such powers and functions as are conferred upon him by the Board of Directors and the Managing Director shall be responsible for the day to day operation of the Company.

27.0. PROCEEDINGS OF THE BOARD OF DIRECTORS

- 27.1. The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings, as they think fit.
- 27.2. The quorum of Directors meeting shall consist of at least two Directors present in person.
- 27.3. The Chairman or in his absence any Director may convene a meeting of Directors.
- 27.4. The Chairman of the Board of Directors shall preside over all meetings of Directors. If at any such meeting the Chairman is not present at the time appointed for holding the same, the Directors present shall choose one amongst them to preside over the meeting. Questions arising at any meeting shall be decided by simple majority of votes and in case of an equality of votes, the chairman of the meeting shall have a second or casting vote.
- 27.5. A Director not physically present at a Board meeting may give his vote on items on the agenda in writing to the Chairman no later than at the beginning of the meeting.
- 27.6. A meeting of the Directors for the time being at which a quorum be present shall be competent to exercise all or any of the authorities, powers and directions by or under the Articles of the Company for the time being vested in or exercisable by the Directors generally.
- 27.7. The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or in accordance with these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a General Meeting of the Company, but for no other purpose.
- 27.8. All acts done by any meeting of the Directors or by any person acting as a Director shall notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors or persons acting as aforesaid, or that all or any of them were disqualified, be as valid as if every such person has been duly appointed and was qualified to be a Director provided that nothing in this Article shall be deemed to give validity to acts done by a Director after the appointment of such Director, has been shown to be invalid.
- 27.9. The Directors shall cause minutes to be duly entered in books provided for the purpose :
- (a) of the names of the Directors present at each meeting or the Directors and of any Committee of Directors;
 - (b) of all orders made by the Directors;
 - (c) of all resolutions and proceedings of General Meetings and of meeting of the Directors;
 - (d) of all appointments of officers, and

- (e) any such minutes of any meeting of the Directors, or of any Committee or of the Company, if purporting to be signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting shall be conclusive evidence of the proceedings.

28.0. NOTICE OF MEETINGS

- 28.1. Notice of the meeting given to a Director at the address registered with the Company shall be deemed to be valid notice.
- 28.2. Generally 3 (three) days notice shall be given for meetings of the Directors. In case of emergency the Chairman or the Managing Director may hold a meeting of the Directors at a shorter notice, provided consent is given by all the Directors to such shorter notice at the meeting held pursuant thereto.
- 28.3. Accidental omission to give notice of any such meeting of the Directors to a Director shall not invalidate any resolution passed at any such meeting.

29.0. RESOLUTION BY CIRCULATION

- 29.1. A resolution(s) contained in one document or in several documents signed by majority of the Directors for the time being, shall be as valid and effectual as if it had been passed at a meeting of the Directors called and held in accordance with the provisions of these Articles.

30.0. POWER OF DIRECTORS

- 30.1. The business of the Company shall be managed by the Directors who may pay all expenses of getting the Company registered and may exercise all such powers and do all such acts and things as the Company is by its Memorandum of Association or otherwise authorised to exercise or required to be exercised or done by the Company in General Meetings but subject nevertheless to the provisions of the Act and of the Memorandum of Association, and these Articles as to any regulations not being inconsistent with the Memorandum of Association and these Articles from time to time made by the Company in General Meetings provided that no such regulation shall invalidate any prior act of the Directors which would have been valid if such regulations had not been made.
- 30.2. Without prejudice to the general powers conferred by the last preceding Article and the other powers conferred by these presents, it is hereby expressly declared that the Directors shall have the following powers, that is to say :
 - a) To pay the cost, charges and expenses preliminary and incidental to the promotion, formation, establishment and registration of the Company.
 - b) To purchase or otherwise acquire for the Company any property rights or privileges which the Company is authorised to acquire at such price and generally on such terms and conditions as they think fit and subject to the provisions of Section 107 (a) of the act to sell, let, exchange or otherwise dispose of absolutely or conditionally any part of the property, privileges and undertaking of the Company upon such terms and conditions and for such consideration as they may think fit.

- c) At their discretion to pay for any property, rights or privileges acquired by or services rendered to the Company either wholly or partially in cash or in shares, bonds, debentures or other securities of the Company, and any such shares may be issued either as fully paid up thereon as may be agreed upon and any such bonds, debentures, or other securities may either specifically charged upon all or any part of the property of the Company, including its uncalled capital not so charged.
- d) To secure the fulfillment of any contracts, agreements or engagements entered into by the Company, mortgage or charges of all or any of the property of the Company and its unpaid capital for the time being or in such other manner as they may think fit.
- e) To appoint any person or persons (whether incorporated or not) to accept and hold in trust for the Company any property belonging to the Company or in which it is interested or for any other purposes and to execute and do all such deeds, documents and things as may be requisite in relation to any such trust and to provide for the remuneration of such trustee or trustees.
- f) To institute, conduct, defend, compound and abandon any legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company and also to compound and allow time for payment or satisfaction of any claims or demands by or against the Company.
- g) To refer any claims or demands by or against the Company to arbitration and observe and perform the awards.
- h) To make and give receipts, releases and other discharges for money payable to the Company and for the claims and demands of the Company.
- i) To act on behalf of the Company in all matters relating to bankrupts and insolvent.
- j) To invest and deal with any of the purposes thereof upon such securities (not being shares in this Company) and in such manner as they think fit, and from time to time vary or realise such investment.
- k) To execute in the name and on behalf of the Company or in favour of any Director or other person who may incur or be about to incur any personal liability for the benefit of the Company, such mortgages of the Company's property (present and future) as they think fit, and any such mortgage may contain a power of sale and such other powers, covenants and provisions as shall be agreed upon.
- l) To give to any person employed by the Company as remuneration for their services such a commission of the profits of the Company and such commission or share or profits shall be treated as part of the working expenses of the Company.
- m) From time to time to make, vary, repeal bye-laws for the regulations of the business of the Company, its officers and servants.
- n) Subject to the provisions of Section 399 of the Act, before recommending any dividends to set aside portions of the profits of the Company to form a fund to provide for such pension, gratuities or compensation or to create any provident fund in such or any other manner as the Directors may deem fit.

- o) To make and alter rules and regulations concerning the time and manner of payment of the contributions of the employees and the Company respectively to any Fund and the actual, employment, suspension, and forfeiture of the benefits of the said fund and application and disposal thereof, and otherwise in relation to the working and management of the said Funds as the Directors shall from time to time think fit.
- p) To enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds and things in the name and on behalf of the Company as they may consider expedient for or in relation to any of the matters aforesaid or otherwise for the purpose of the Company.
- q) To make, draw, endorse, sign, accept, negotiate and give all cheques, bills of lading, drafts, orders, bills of exchange and promissory notes and other negotiable instruments required in the business of the Company.
- r) To pay and charge to the capital account of the Company any interest lawfully payable thereon under the provisions of Section 157 of the Act.
- s) To insure and keep insured against loss or damage by fire or otherwise for such period and to such extent as they may think proper all or any part of the buildings, machinery, goods, stores, produce and other movable and immovable property of the Company either separately or jointly, also to insure all or any portion of the goods, produce, machinery and other articles dealt with, imported or exported by the Company, and to sell, assign, surrender or discontinue any policy of assurance effected in pursuance of this power.
- t) To open accounts with any bank(s) or with any company, firm or individual and to pay money into or draw money from any such account from time to time as the Directors may think fit.
- u) To attach to any shares to be issued as the consideration for any contract with or property acquired by the Company, or in payment for services rendered to the Company, or to the transfer thereof such conditions as they think fit.
- v) To accept from any member on such terms and conditions as shall be agreed the surrender of his shares or stock or any part thereof.
- w) To determine from time to time who shall be entitled to sign on Company's behalf bills, notes, receipts, acceptances, endorsements, cheques, dividends, warrants, releases, contracts and documents.
- x) To provide for the welfare of employees of the Company and the wives, widows and families or the dependants or connections of such person by building or contributing to the building of houses, dwellings or chawlas or by grants of money, pensions, allowances, bonus or other payments or by creating and from time to time subscribing or contributing to provident fund and other associations, institutions, funds or trusts and providing or subscribing or contributing towards places of instruction and recreation, mosques, schools, colleges, universities, hospitals and dispensaries, medical and such other attendance as the Directors shall think fit and to subscribe, contribute or otherwise assist or to guarantee money to charitable,

benevolent, religious, scientific, national or other objects which shall have any moral or other claim to support or aid by the Company either by reason of locality or operation of public and general utility or otherwise.

- y) Before recommending any dividend to set aside out of the profits of the Company such sums as they may think proper for Depreciation Fund, Reserve Fund or Sinking Fund or for any special fund to meet contingencies or to repay redeemable preference shares, debentures or debenture stock or for special dividends or for equalising dividends or for repairing, improving, extending and maintaining any part of the property of the Company and for such other purpose (including the purposes referred to in the preceding clause) as the Directors may in their absolute discretion think conducive to the interest of the Company and to invest the several sums to set aside or so much thereof as are required to be invested upon such investments (subject to the restrictions imposed by Section 121 and other provision of the Act) as the Directors may think fit and from time to time deal with and vary such investments and dispose of and apply and expend all or any part thereof for the benefit of the Company, in such manner and for such purposes as the Directors (subject to such restrictions as aforesaid) in their absolute discretion think conducive to the interest of the Company notwithstanding that the matter to which the Directors apply or upon which they expend the same, or any part thereof or upon which the capital money of the Company might rightly be applied or expended and to divide the reserve funds into such special funds as the Directors may think fit and to employ the assets constituting all or any of the funds including the depreciation funds in the business of the Company or in the purchase of or payment for redeemable preference shares, debentures or debenture stock and that without being bound to pay interest on the same separate from the other assets, with power, however, to the Directors at their discretion to pay or allow to the credit of such fund interest at such rate as the Directors may think proper, not exceeding nine percent per annum.
- z) To comply with the requirements of any local law which in their opinion it shall in the interest of the Company be necessary or expedient to comply with.
- aa) Board may co-opt any person as an Official Director from amongst the members, staff or outsiders who will be entitled to attend meeting when called upon to do so by the Chairman, but shall not have any right to vote. He will be entitled to attend the meeting only for such time as the particular business requires for which he is called. The Board shall determine the functions privileges and remuneration of such Directors.
- bb) To manage all concerns and affairs of the Company, to appoint and employ officers, organizers, workmen, day labourers for the purpose of the Company and to remove or dismiss them and appoint others in their place and to pay such persons as aforesaid such salaries, wages or other remuneration as may be deemed fit and proper.
- cc) To borrow or raise any sum of money by loan, on hypothecation or mortgage on such terms and conditions as may be deemed fit and proper.

- dd) To establish branch offices and agencies in any part of Bangladesh or abroad.
- ee) To invest funds of the Company or to dispose of the same on behalf of the Company as may be decided by the Board of Directors.
- ff) To give donation and subscriptions for charitable or benevolent objects.
- gg) The Directors may from time to time delegate all or any of their powers and authorities herein to the Executive Committee, the Managing Director, Directors, officers of the Company and/or any other person(s) as they may decide.

31.0. COMMITTEE

- 31.1. The Directors may appoint any Committee(s) standing or otherwise to assist them in the discharge of their functions and may delegate all or any of their powers to such Committee(s).
- 31.2. The meetings and proceedings of any such Committee(s) shall be governed by the provisions of these Articles for regulating meetings and proceedings of the Directors so far as the same are applicable thereto and are not superseded by any regulations made by the Directors.

32.0. RETURNS

- 32.1. The Company shall make and file the requisite Annual Returns in accordance with section 36 of the Act.

33.0. DIVIDEND

- 33.1. Subject to the rights of member entitled to share, if any with preferential or special rights attached thereto, as to dividends, and subject to the provisions of these presents as to the Reserve Fund and Depreciation Fund the net profit of the Company in respect of any year or other period shall be applied in the payment of dividend on the ordinary shares of the Company, but so that a partly paid up share only entitle the holder with respect thereto to such proportion of the distribution upon a fully paid-up share as the amount paid thereon bears to the nominal amount of each share.
- 33.2. The Company in General Meeting may declare a dividend to be paid to the members according to their rights and interest in the profits and may fix the time for payment.
- 33.3. No larger dividend shall be declared than is recommended by the Directors but the Company in General Meeting may declare a smaller dividend.
- 33.4. No dividend shall be payable except out of the profits of the Company of the year or any other undistributed profits, and dividend shall not carry interest as against the Company.
- 33.5. The declaration of the Directors as to the amount of net profits of the Company shall be conclusive.
- 33.6. The Directors may from time to time pay to the members such interim dividend as in their judgment the position of the Company justifies.

- 33.7. The Directors may retain any dividend on which the Company has a lien, to the extent of the debts, liabilities or engagements in respect of which the lien exists, and may apply the same in or towards the satisfaction of such debts, liabilities or engagements.
- 33.8. Any General Meeting declaring a dividend may resolve that such dividend be paid wholly or in part by distribution of specific assets and in particular of paid up shares, debentures or debenture stock either of the Company or of any other Company or in any one or more such ways.
- 33.9. A transfer of shares shall not pass the right to any dividend declared thereon before the registration of the transfer.
- 33.10. The Directors may retain the dividends payable upon shares in respect of which any person is under the transmission article entitle to become a member or which any person under that Article is entitle to transfer, until such person shall become a member in respect thereof or shall duly transfer the same.
- 33.11. Any one of several persons who are registered as the joint holders of any shares may give effectual receipt for all dividends and payments on account of dividend in respect of such shares.
- 33.12. Unless otherwise directed, any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto, or in the case of joint holders to registered address of that one whose name stands first on the register in respect of the joint holding or to such person and such address as the member or person entitle or such joint holders as the case may be directed, and every cheque or warrant so sent shall be made payable to the order or such other person entitled or such joint holders as the case may be, may direct several executors or administrators, of a deceased member in whose sole name any shares shall stand, shall for the purpose of this clause be deemed to be joint holders thereof.
- 33.13. All dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed. Unclaimed dividend shall not be forfeited by the Company.

34.0. CAPITALISATION OF PROFITS

- 34.1. Any General Meeting may upon the recommendation of the Directors resolved that any sum or sums representing the whole or any part of the profits of the Company for the time being undistributed standing at the credit of its accounts or any sum or sums standing at the credit of any Reserve Account, including any capital Reserve Account, or any sum or sums at any time received as premiums upon the issue of any shares, debentures or debenture-stock of the Company or any amount or amounts arising by reason of any sale or other disposition of any evaluation of assets of the Company be capitalised and distributed amongst such of the shareholders as would be entitled to receive the same if distributed by way of dividend on the shares and in the same proportions on the footing that they become entitled thereto as capital and that such capitalised fund be applied on behalf of such

shareholders in paying up in full any unissued shares, debentures or debenture-stock of the Company which shall be distributed accordingly, and that such distribution or payment shall be accepted by such shareholders in full satisfaction of their interest in the said capitalised sum.

- 34.2. Whenever such a resolution as aforesaid shall have been passed, the Directors shall make all appropriations and applications of the undistributed profits resolved to be capitalised thereby and all allotments and issues of fully paid shares or debentures, if any and generally shall do all acts and things required to give effect thereto with full power to the Directors to make such provisions by the issue of fractional certificates or by payment in cash or otherwise as they think fit for shares or debentures becoming distributable in fractions and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the Company providing for the allotment to them respectively credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation or (as the case may require) for the payment by the Company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares and any agreement made under such authority shall be effective and binding on all such members.

35.0. BANK ACCOUNT

- 35.1. All moneys belonging to the Company shall be deposited with such Bank or Banks as the Board of Director shall think expedient and the cheques shall be signed and the accounts shall be operated by the person(s) authorised by the Board of Directors.

36.0. BOOKS AND DOCUMENTS

- 36.1. The Directors shall cause to be kept proper books of accounts with respect to:
- a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place;
 - b) all sales and purchases of goods by the Company ;
 - c) the assets and liabilities of the Company ;
- 36.2. The books of accounts shall be kept at the Registered Office or at such other place as the Director think fit, and shall be open to inspection by the Directors during business hours.
- 36.3. The Directors shall from time to time determine whether and to what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be opened to the inspection of the members not being Directors and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by the law or authorised by the Directors or by the Company in General Meeting.

37.0. AUDIT

- 37.1. The Company shall at each Annual General Meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the next Annual General Meeting and shall, within 7 (seven) days of the appointment, give intimation thereon to every auditor so appointed;

Provided that no person can be appointed auditor of the Company unless his written consent has been obtained prior to such appointment or re-appointment.

- 37.2. Every auditor appointed under these presents above shall within 30 (thirty) days of the receipt from the Company of the intimation of his appointment inform the Registrar in writing that he has accepted, or refused to accept, the appointment.
- 37.3. At any Annual General Meeting, a retiring auditor by whatsoever authority appointed may be re-appointed, unless
- (a) he is not qualified for re-appointment; or
 - (b) he has given the Company notice in writing of his unwillingness to be re-appointed; or
 - (c) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed, provided that for the purpose of passing a resolution under clause(c) above a notice thereof shall be issued to all members prior to the meeting and such resolution cannot be passed except on the ground of death, incapacity or dishonesty or disqualification of the retiring auditor.
- 37.4. The first auditor(s) of the Company shall be appointed by the Board of Directors within one month from the date of Registration of the company, and the auditor(s) so appointed shall hold office until the conclusion of the first Annual General Meeting of the Company. If the Board fails to exercise its powers under this Article, the Company in General Meeting may appoint the first auditor(s).
- 37.5. The Board may fill any casual vacancy in the office of any auditor, but while any such vacancy continues, the remaining auditor(s), if any, may act. If any vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the Company in General Meeting.
- 37.6. Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next Annual General Meeting. Any auditor appointed under this Article may be removed from office before the expiry of his term only by a Special Resolution of the Company in General Meeting.

38.0. REMUNERATION OF AUDITOR

- 38.1. The remuneration of the auditor(s) of the Company
- (a) in the case of an auditor appointed by the Board shall be fixed by the Board; and
 - (b) subject to clause (a) above, shall be fixed by the Company in General Meeting or in such manner as the Company in General Meeting may determine.

- 38.2. The Auditors of the Company shall be entitled to receive notice of and to attend any General Meeting of the Company at which any accounts which have been examined or reported on by them are to be laid before the Company and may make any statements or explanations they desire with respect to the accounts.
- 38.3. Every account when audited and approved by a General Meeting shall be conclusive except as regards any error discovered therein within 3 (three) months after the approval thereof. Whenever any error is discovered within that period the accounts shall forthwith be corrected and henceforth shall be conclusive.

39.0. ACCOUNTS AND BALANCE SHEET

- 39.1. The Directors shall as required by Sections 183 and 184 of the Act, cause to be prepared and to be laid before the Company in General Meeting such profit and loss accounts, income and expenditure accounts, balance sheet and report as are referred to in those Sections.
- 39.2. The profit and loss account shall in addition to the matter referred to in sub-section (3) of Section 185 of the Act show, arrange under the most convenient heads, the amount of gross income distinguishing the several sources from which it has been derived and the amount of gross expenditures distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the years income shall be brought into accounts so that a just balance of profit and loss may be laid before the meeting and in cases where any item of expenditure which may in fairness be distributed over the several years has been incurred in any one year, the whole amount of such item shall be stated with the addition of reasons why only a portion of such expenditure is charged against the income of the year.
- 39.3. A balance sheet shall be made out in every year and laid before the Company in General Meeting made up-to-date not more than nine months before such meetings. The balance sheet shall be accompanied by a report of the Directors as to the state of the Company's affairs, and the amount if any, which they recommend to be paid by way of dividend and the amount, if any, which they propose to carry to a reserve fund.
- 39.4. A copy of the balance sheet and report shall not be less than fourteen days before the meeting, be sent to the persons entitled to receive notices of General Meeting in the manner in which notices are to be given hereunder.
- 39.5. The Directors shall in all respects comply with the provisions of Sections 130 to 135 of the Act, or any statutory modifications thereof for the time being in force.

40.0. COMMON SEAL

- 40.1. There shall be Common Seal of the Company. The Directors shall provide for the safe custody of the Common Seal and subject to the provisions hereinafter contained for the signatures on certificates of title to the shares of the Company, the Common Seal shall never be used except by the authority previously given by the Directors and one (1)

Director at least shall sign every instrument on which the Common Seal is affixed and every such instrument shall be countersigned by the Managing Director, Secretary or other person appointed by the Board provided, nevertheless that any instrument bearing the Common Seal of the Company and issued for valuable consideration shall be binding on the Company notwithstanding any irregularity in compliance with the provision set out herein.

- 40.2. The Company may, for its use outside Bangladesh have an official seal which shall be a facsimile of the common seal of the Company with addition on its face of the name of the territory or place where it is to be used.

41.0. SECRETARY

- 41.1. The Board of Directors of the Company may appoint a Secretary of the Company for such term at such remuneration and upon such conditions as it may think fit and the Secretary shall observe and perform such duties and functions as may be prescribed by the Board of Directors, who may, at its discretion, terminate the services of the Secretary.

42.0. NOTICE

- 42.1. A notice may be given by the Company to any member or Director either personally or by sending it by post to him to his registered address or (if he has no registered address in Bangladesh) to the address supplied by him to the Company for giving of notice to him, or by confirmed telex or facsimile provided by a Director or Shareholder.
- 42.2. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice unless the contrary is proved to have been effected at the times at which the letter would be delivered in the ordinary course of post.
- 42.3. The signature to any notice to be given by the Company may be written or printed.
- 42.4. In the event of a winding up of the Company every member of the Company who is not for the time being in Dhaka shall be bound within eight weeks after the passing or an effective resolution to winding-up the Company voluntarily or the making of an order for the winding up of the Company to serve notice in writing on the Company appointing some householder residing in Dhaka upon whom all summons, notice, process, orders and judgments in relation to or under the winding-up of the Company may be served and in default of such nomination the liquidator of the Company shall be at liberty on behalf of such member to appoint some such person and service upon any appointee whether appointed by the member or the liquidator shall be deemed to be good personal service on such member for all purposes and whether the liquidator makes any such appointment he shall with all convenient speed give notice thereof to such member by advertisement in some Dhaka daily newspaper or by a registered letter send through the post and addressed to such member at his address as mentioned in the Register of members of the Company

and such notice shall be deemed to be served on the day following that on which the advertisement appears or the letter is posted. The provisions of this Article shall not prejudice the right of the liquidator of the Company to serve any notice or other document in any other manner prescribed by the regulations of the Company.

43.0. RECONSTRUCTION

- 43.1. On any sale of the undertaking of the Company, the Director or the Liquidator on a winding-up may, if authorised by an Extra-Ordinary Resolution accept fully paid up shares, debentures or securities of any other Company, whether incorporated in Bangladesh or not other than existing or to be formed for the purchase in whole or in part the property of the Company and the Directors (if the profits of the Company permit), or the Liquidator (in winding-up), may distribute such shares debenture or securities, or any other property of the Company amongst the members without realisation or vest the same in trustees for them and any Extra-Ordinary Resolution may provide for the distribution or appropriation of the cash shares, debentures securities, benefits or property, otherwise than in accordance with the strict legal rights of the members or contributories of the Company and for the valuation of any such securities or property at such price and in such manner as the meeting may approve, and all holders of shares shall be bound to accept by any valuation or distribution so authorised, and right in relation thereto, save only in case the Company is proposed to be or is in the course of being wound-up such statutory rights (if any) under Section 294 of the Act as are incapable of being varied or excluded by these Articles.

44.0. SECRECY

- 44.1. Every Director, the Secretary, Manager, Auditor, Trustee, Member of a Committee, Officer, Servant, Agent, Accountant or other person employed in the business of the Company shall, if so required by the Directors before entering upon his duties, sign a declaration pledging himself to observe strict secrecy respecting all transactions of the Company with its customers and the state of Accounts with individuals and in matters relating thereto and shall by such declaration pledge himself not to reveal any of the matters which may come to his knowledge in the discharge of his duties except when required to do so by the Directors or by any meeting or by a Court of Law and except as far as may be necessary in order to comply with any of the provisions in these Articles.

45.0. INDEMNITY

- 45.1. Subject to provisions of Section 102 of the Act, every Director of the Company, the Managing Director, the Secretary, Manager and other officer or employee of the Company shall be indemnified by the Company and it shall be the duty of the Directors of the Company to pay out the fund of the Company all cost, losses and expenses (including travelling expenses) which any such Director, Managing Director, Secretary, Manager,

Officer or other employee may incur or become liable to by reason of any contract entered into or act or deed done by him as such Director, Managing Director, Secretary, Manager, officer or other employee in the discharge of his duties.

- 45.2. Subject as aforesaid every Director, the Managing Director, Secretary, Manager, Auditor or any other officer of the Company shall be indemnified against any liability incurred by him, as such Directors, Managing Director, Secretary, Manager, Auditor or officer in defending any proceedings whether civil or criminal in which the judgment is given in his favour or in which he is acquitted or in connection with any application under Section 396 of the Act in which relief is given to him by the Court.
- 45.3. Subject to the provisions of Section 102 of the Act, no Director, Managing Director, Secretary, Manager, Auditor or other officer of the Company shall be liable for the act, receipt, neglect or default of any other Director or Officer or for joining in any receipt or other act or conformity or for any loss or expenses happening to the Company through or by order of the Director for or on behalf of the Company or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested or any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person with whom any money, securities or effect, shall be deposited or for any loss occasioned by an error of judgment, omission, default or oversight on his part or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or relation thereto, unless the same happen through the willful default and neglect of such Directors, Managing Director, Secretary, Manager, Auditor or other officer of the Company.

46.0. WINDING-UP

- 46.1. If the Company shall be wound-up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid-up capital such assets shall be distributed so that as nearly as may be losses shall be borne by the members in proportion to the capital paid-up or which ought to have been paid up at the commencement of the winding-up on the shares held by them respectively. And if in a winding-up the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding-up the excess shall be distributed amongst the members in proportion to the capital at the commencement of the winding-up paid up or which ought to have been paid up on the shares held by them respectively. But this Article is to be without prejudice to the rights of the holders of shares issued on special terms and conditions.
- 46.2. If the Company shall be wound-up whether voluntarily or otherwise the liquidator may with sanction of an extra-ordinary resolution divide among the members in specie or kind any part of the assets of the Company, and may with the like sanction vest any part of the assets of the Company in trustees upon such trust for the benefit of the members or any of them as the liquidator, with the like sanction, shall think fit.

We, the several persons whose names and addresses and descriptions are given below, are desirous of being formed into a Company, in pursuance of this Articles of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Sl. No.	Name	Position	Number of Shares of Taken	Signature of Subscribers
01	Name: Md. Shimul Khan S/O.: Md. Hazratul Islam Mother's: Fatema Begum Address: 45/A, 2 nd Colony, Magar Road, P.S-Darussalam, Section-1, Mirpur, Dhaka. Date of Birth: 27/11/1982 TIN: 413027809543 ID: 2804542337 E-mail: info@ABCDE.ltd Mob: +880 17 1641 1634 Business, Bangladeshi.	Chairman	8,000 (Eight Thousand) shares	
02	Name: Minhajul Khan S/O.: Nazmul Khan Mother's: Moluda Khatun Address: House-13, Road-02, Block-F, Banani Model Town, Dhaka. Date of Birth: 24/02/1973 TIN: 668832257361 ID : 4604518021 E-mail: info@ABCDE.ltd Mob: +880 17 13093580 Business, Bangladeshi.	Managing Director	2,000 (Two Thousand) shares	
		Total	10,000 (Ten Thousand) Shares	

Dated the 19th day of September 2019.

Witness to the Signatures of the subscribers.

Sample of Public Limited Company

MAGNITUDE BANK LIMITED
MEMORANDUM
AND
ARTICLES OF ASSOCIATION

The Companies Act – 1994
(Act XVIII of 1994)
(A Public Company Limited by Shares)

THE COMPANIES ACT XVIII 1994

MEMORANDUM OF ASSOCIATION
OF
MAGNITUDE BANK LIMITED

1. The name of the company is MAGNITUDE BANK LIMITED (herein under called the Company).
2. The registered office of the Company will be situated in Bangladesh.
3. The objects for which the company is established are:
 - (a) to carry on, transact, undertake and conduct the business of banking in all branches and to transact and do all matters and things incidental thereto in and outside Bangladesh.
 - (b) to receive, borrow, or raise money on deposit, loan, or otherwise upon such terms as the Company may approve and to give guarantees and indemnities in respect of all debts and contracts;
 - (c) to advance or lend money for construction of houses in rural and urban areas;
 - (d) to advance or lend money to the unemployed persons for self-employment and rehabilitation in the society and to take such other financial step as the company may deem fit for overall alleviation of poverty of the suffering millions of the country;
 - (e) to finance the Small and Cottage Industries for industrialization and also to create employment opportunities;
 - (f) to establish, maintain, carry on, transact and undertake all kinds of investment and financial business, including underwriting, managing and distributing the issue of stocks, shares, bonds, debentures, import permits and other securities directly or jointly with one or more banks or financial institutions;
 - (g) to advance, deposit and lend money on real, personal and mixed Securities, on cash, credit or other accounts on Policies, Bonds, Debentures, Bills of Exchange, Promissory Notes, Letter of Credits, or other wares and merchandise, Bills of sale and Lading, Delivery Orders, other Magnitude indicia or tokens, Bullion, Stocks and Shares;

- (h) to advance, deposit or lend money to or with such persons, firms or bodies corporate or non corporate, and on such terms as may be deemed expedient;
- (i) to carry on the business of discounting, dealing in exchanges in specie and securities and all kinds of Magnitude banking;
- (j) to carry on the business of dealers in foreign exchange, including buying and selling of foreign exchange, dealing in foreign currency notes, granting and issuing of letters of credit, traveler's cheques, circular notes and negotiating and discounting of export documents and all other matters related to foreign exchange business;
- (k) to carry on the business of buying and selling bullion and species;
- (l) to provide for safe-deposit vaults and the safe custody of valuables of all kinds;
- (m) to carry on business as financiers, promoters, capitalists, financial and monetary agents, concessionaires and brokers;
- (n) to guarantee or become liable for the payment of money or for the performance of any obligation and generally to transact all kinds of guarantee business and also to transact all kinds of agency business; to act as official liquidator and receiver; to contract or negotiate all kinds of loan, aid of assistance, private or public, from any source, local or foreign and to take all such steps as may be required to complete and effectuate such deals; to draw, make, accept, endorse, discount, negotiate, execute and issue bills of exchange, promissory notes, and other negotiable or transferable instruments including notes, warrants and coupons; to borrow or raise money or secure the payments of money by issue or sale of Shares, Stocks, Bonds, Debentures, other securities and obligations, other perpetual or terminable and or redeemable or otherwise, and to charge or secure the same by trust deed or otherwise on the undertaking of the Company or upon any specific property and rights, present or future of the Company;
- (o) to purchase or otherwise acquire and undertake the whole or any part of or any interest in the business, goodwill, property, contracts, agreements, rights, privileges, effects and liabilities of any other company, corporation, partnership, body, person or persons carrying on, or having ceased to carry on any business which the company is authorised to carry on upon such terms and conditions as the Company may deem fit; to acquire, contract, maintain or alter any immovable or movable property, rights or privileges which the company may deem necessary, or convenient for the purpose of the company and to develop and turn to account and deal with the same in such manner as may be decided expedient and convenient for the purpose of the Company;
- (p) to invest the capital and other money of the Company not immediately required in the purchase, exchange or upon the security of shares, stocks, debentures, debenture stocks, bonds mortgages, obligations and securities of any kind issued or guaranteed by any bank, company, corporation, government, municipal authority or body or undertaking or whatever nature and wheresoever, constituted or carrying on business or to invest in any manner as may be determined by the Company;

- (q) to carry on any other business, which in the opinion of the company is incidental or conducive to the promotion or advancement of the business of the company;
 - (r) to appoint officers, staff, experts, advisers, consultants, auditors, legal advisers and to provide for their suitable remunerations;
 - (s) to provide for and to establish and support or aid in the establishment or support of any association, institution, fund, trust and convenience calculated to the benefit of the employees and staff, former or present and their dependents;
 - (t) to amalgamate with or reconstruct or reorganize any company bank or body corporate or association in co-operation with any other person, company, bank or association;
 - (u) to form, establish and organize abroad any bank, company, institution or organization in joint collaboration or partnership with any individual company, financial institution, bank, organization for the purpose of carrying on banking and/or any other business subject to approval of Bangladesh Bank; to form/establish subsidiary company(ies) in joint collaboration with any Individual(s)/Company(ies)/Firm(s) with a view to expand/diversify business in the form of Asset Management Company or Merchant Bank or Leasing Company or General Insurance of Life Insurance or Credit Rating Company or Brokerage House or any other business as deemed fit by the Company, as per provisions of relevant laws of Bangladesh and subject to prior approval from the Bangladesh Bank and other regulatory authorities.
 - (v) to establish and open offices and branches to carry on all or any of the above business abroad and within the country provided prior permission is obtained from Bangladesh Bank;
 - (w) It is hereby declared that the objects of the Company as specified in each of the foregoing paragraphs except where otherwise expressed in such paragraph, shall be separate and independent objects of the Company and shall not be in any way limited or restricted by reference to or inference from the terms of any other paragraph or the order in which the same occur or the name of the Company;
 - (y) This Memorandum shall not be changed without prior permission from Bangladesh Bank.
4. The liability of the members is limited.
 5. “The authorised capital of the Company is Tk 12,00,00,00,000.00 (Taka twelve hundred Crore) divided into 120,00,00,000 (One hundred twenty Core) ordinary shares of Tk 10/- (Ten) each with the rights and privileges and conditions attached thereto as are provided by the Articles of Association of the Company for the time being with power to increase and reduce the capital of the Company in accordance with the Articles of Association of the Company and the law for the time being in force”.

We, the undersigned persons whose names and addresses are given below are desirous of being formed into a Public Limited Company in pursuance of this Memorandum of Association and we respectively are agreeable to take the number of Shares in the capital of the Company set opposite to our respective names.

Sl No	Name, Address, nationality and description of subscribers	Number of Shares taken by each Subscriber	Signature of Subscribers	Name and Addresses of witness
01.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	60,000 (Sixty Thousand)	Sd/-	
02.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	25,000 (Twenty five Thousand)	Sd/-	
03.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	50,000 (Fifty Thousand)	Sd/-	
04.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	50,000 (Fifty Thousand)	Sd/-	

Sl No	Name, Address, nationality and description of subscribers	Number of Shares taken by each Subscriber	Signature of Subscribers	Name and Addresses of witness
05.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	100,000 (One Lac)	Sd/-	
06.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	100,000 (One Lac)	Sd/-	
07.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	50,000 (Fifty Thousand)	Sd/-	
08.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	200,000 (Two Lac)	Sd/-	
09.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	100,000 (One Lac)	Sd/-	

Sl No	Name, Address, nationality and description of subscribers	Number of Shares taken by each Subscriber	Signature of Subscribers	Name and Addresses of witness
10.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	100,000 (One Lac)	Sd/-	
11.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	25,000 (Twenty five Thousand)	Sd/-	
12.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	75,000 (Seventy five Thousand)	Sd/-	
13.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	40,000 (Forty Thousand)	Sd/-	
14.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	115,000 (One Lac fifteen Thousand)	Sd/-	

Sl No	Name, Address, nationality and description of subscribers	Number of Shares taken by each Subscriber	Signature of Subscribers	Name and Addresses of witness
15.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	100,000 (One Lac)	Sd/-	
16.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	200,000 (Two Lac)	Sd/-	
17.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	150,000 (One Lac fifty Thousand)	Sd/-	
18.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	200,000 (Two Lac)	Sd/-	
19.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	100,000 (One Lac)	Sd/-	

Sl No	Name, Address, nationality and description of subscribers	Number of Shares taken by each Subscriber	Signature of Subscribers	Name and Addresses of witness
20.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	150,000 (One Lac fifty Thousand)	Sd/-	
21.	Name : Father's Name : Mother's Name : Present and Permanent Address : NID : Date of Birth : Business : TIN :	25,000 (Twenty five Thousand)	Sd/-	

Total

Dated, Dhaka 3rd of May, 1999

THE COMPANIES ACT XVIII 1994

PUBLIC COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION OF MAGNITUDE BANK LIMITED

PRELIMINARY

2. In these Articles, unless, there be something in the subjects or context inconsistent therewith:

- | | | |
|-----|---|-----------------------|
| 2.1 | “Act” means the Companies Act, 1994 as amended from time to time. | |
| 2.2 | “Alternate Director” means a Director for the time being of the Company appointed under article 98. | Alternate
Director |
| 2.3 | “Articles” means the Articles of Association of the Company as originally hereby framed or as altered from time to time by special resolution passed by the Board subject to Article 166. | Articles |
| 2.4 | “Auditor” means the person for the time being performing auditing duties of the company. | Auditor |

2.5	“The Board” means the Board of Directors for the time being of the Company;	Board of Directors
2.6	“Chairman”, “First Vice Chairman” and “Second Vice Chairman” mean the Chairman, First Vice Chairman and Second Vice Chairman of the Board of Directors of the Company for the time being.”	Chairman
2.7	“Company” means “MAGNITUDE BANK LIMITED” a public limited company incorporated under the Act having its registered office in Bangladesh.	Company
2.8	“Director” means the Directors for the time being of the Company or the Directors assembled at a meeting of the Board of Directors.	Directors
2.9	“Dividend” includes bonus.	Dividend
2.10	“Government” means the Government of the People’s Republic of Bangladesh.	Government
2.11	“Managing Director” means the Managing Director of the Company appointed under Article 129.	Managing Director
2.12	“Year” & “Month” means English Calendar year month.	Year & Month
2.13	“Office” means the registered office for the time being of the Company.	Office
2.14	“These Presents” means these Articles of Association as originally hereby framed or as altered from time to time under Article 166.	These Presents
2.15	“Proxy” includes an attorney duly constituted or appointed under an instrument of proxy, power of attorney or other authority in writing.	Proxy
2.16	“Seal” means the Common seal of the company or any facsimile of the common seal used by the Company.	Seal
2.17	“In writing” or “written” means and includes hand writing, printing, type-writing, lithography and any other mode of reproducing works in visible form.	In writing/ written
2.18	The marginal notes hereto shall not affect the meaning or construction hereof.	Marginal notes
2.19	Words importing person shall include bodies, corporate and non corporate and the Government.	Persons
2.20	Words importing the singular number shall include the plural, and vice versa.	Singular Number
2.21	Words or expressions shall, except where repugnant to subject or context, bear the meaning, in these Articles as in a standard English Dictionary.	Meaning of words or Expressions

COMMENCEMENT OF BUSINESS

3. Subject to Section 150 of the Act, the Company shall Commence business from the date of issue of banking LICENCE by Bangladesh Bank or from any subsequent date as may be decided by the Board of Directors.

Commence of Business

CAPITAL

4. “The authorized share capital of the company shall comprise ordinary shares of Tk 12,00,00,00,000.00 (Taka twelve hundred crore) divided into 120,00,00,000 (One hundred twenty crore) ordinary shares of Tk 10/-(Taka Ten) each.”
- 4.1 The share in the company shall be held by the following groups of share-holders:
- | | | |
|-----------------------|----------------|------|
| Sponsors | Group A | 50% |
| General Public | Group B | 50 % |
- 4.2 Any issue of further or new shares at any time shall be made in such manner so as to preserve and maintain the respective percentage shareholdings set out in Sub-Article 4.1 above unless otherwise agreed to in writing by the Group-A share-holders.
- 4.3 The unsubscribe portion of the public issue from Group-B shall be subscribed by the Bangladeshi sponsors (i.e. the Group-A shareholders) proportionate to their shareholdings subject to any restriction imposed by the Bangladesh Bank from time to time.
5. The Company shall keep a Register of members and an Index of Members in accordance with Section 34 and 35 of the Act.
6. The Register of Members and the Index of the Members shall be open to inspection by a member of the company without charge and by and other persons on payment of such charge as may be fixed by the Board. Any member of other persons aforesaid may take extracts there from.
7. The Company shall send to any member on request extracts of the Register of Members or of the list and summary required under the Act on payment of such charge as may be fixed by the Board. Such extracts shall be sent within the period prescribed by the Act.
8. The Board of Directors may proceed with the allotment of the shares upon a minimum subscription of Tk. 25,00,000/- (Taka twenty five lac).

Share Capital

Register of
MembersInspection of Register of
MembersThe Company
to send
extract of
Register etc.Minimum
subscription

- | | |
|--|---|
| <p>9. Subject to these presents and any directions imposed by the Government or the Bangladesh Bank the share in the Capital of the Company for the time being, including any share forming part of any increased capital of the Company, shall be under the control of the Board of Directors who may allot or otherwise dispose of the same or any of them to such persons in such proportion and on such terms and conditions and at such time as they may from time to time deem fit.</p> | <p>Shares at the disposal of the Board</p> |
| <p>10. Subject to these presents, the Board of Directors may allot and issue shares in the capital of the Company as payment or part payment of any property sold or goods purchased or machinery supplied or for services rendered to the Company and any shares so allotted shall be issued as fully paid-up shares.</p> | |
| <p>11. In addition to and without derogating from the powers for that purpose conferred upon the Board of Directors under Article 9 the company in General Meeting may (subject to maintaining the percentages set forth in Article 4 hereof) determine that any shares, whether forming part of the original capital or of any increased capital of the Company, shall be offered to such persons, whether members or holders of debentures of the Company or not, in such proportions and on such terms and conditions as the General Meeting may determine.</p> | <p>Issue of shares by General Meeting</p> |
| <p>12. Any application signed by or on behalf of an applicant for shares in the Company, followed by an allotment of any share therein, shall be an acceptance of such shares within the meaning of these presents and every person who thus or otherwise accepts any shares and whose name is on the Register of Members shall for the purposes of these presents be a member.</p> | <p>Acceptance of shares</p> |
| <p>13. The money, if any, which the Board shall, on the allotment of any shares being made by them, require or direct to be paid by way of deposit, call or otherwise in respect of any such shares allotted by them shall, immediately on the insertion of the name of the allotted in the Register of Members as the name of the holder of such shares, become a debt to and recoverable by the Company from the allottee thereof and shall be paid accordingly.</p> | <p>Deposit and call etc. to be a debt payable immediately</p> |

14. Save as herein otherwise provided, the Company shall be entitled to treat the person whose name appears on the Register of Members as the holder of any share as the absolute owner thereof and accordingly shall not, except as ordered by a Court of competent jurisdiction or as by law required, be bound to recognise any trust or equity or equitable contingent or other claim to or interest in such share on the part of any other person whether or not it shall have express or implied notice thereof.
15. No part of the funds of the Company shall be employed in the purchase of or be lent on the security of the shares of the Company.
16. No share of the Company shall be allotted unless fully paid before allotment.

COMMISSION

17. The Company may at any time pay a commission to any person for procuring or agreeing to procure subscriptions, whether absolute or conditional for any shares, debentures or debenture stocks of the Company but the amount or rates of such commission shall not exceed one percent (1%) of the price of the shares, debentures or debenture stocks actually sold through brokers.

ISSUE OF CERTIFICATE

18. Every members shall be entitled without payment to one (1) certificate for the shares registered in his name or if the Board of Directors so approve and upon paying such fee or fees as the Board may from time to time determine or at the discretion of the Board without payment of fees, to several certificates each for one or more shares. Every certificate or shares shall specify the number and denote the numbers of the shares in respect of which it is issued and the amount paid thereon and shall be in such form as the Board shall prescribe or approve. Where a member has transferred a part of the shares comprised in his holding he shall be entitled to a certificate for the balance without charge.

Company not bound to recognise any interest in share other than that of the registered holders
Company funds shall not be applied in purchase of or lent on shares of the Company
Allotment of share after full payment

Commission for placing shares, debentures or debenture stocks

Member's rights to certificate

19. If any certificate becomes worn out, defaced or rendered useless from any cause whatsoever, then upon production thereof to the Board, they may issue a new certificate in lieu thereof and if any certificate is lost or destroyed, then upon proof thereof to the satisfaction of the Board and upon such indemnity as the Board may deem adequate being given a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate. A sum not exceeding Tk. 100/- (One hundred) shall be paid to the company for every certificate issued under this article.

Issue of new
certificate in place
of one defaced,
lost or destroyed

FORFEITURE OF SHARES

20. **Notice of Forfeiture:** If a member fails to pay any call or installment of a call on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of such call or installment remains unpaid, serve a notice on him demanding payment of so much of the call or installment as is unpaid, together with interest and all expenses that may have been incurred by the Company be reason of such non-payment. A Second notice stating a further date (not earlier than the expiration of 14 days from the date of first notice) shall, in the event of non-payment at or before the time appointed for the purpose be issued intimating shares in respect of which the call was made, will be liable to be forfeited.
- 20.1 **Forfeiture of Share:** If the requisitions of the notice referred to above are not complied with, any share in respect of which such notice has been given, may at any time after the expiration of the time specified the notice and before payment of all calls, interest and expenses due thereof, be forfeited by a resolution of the Board to that effect.
- 20.2 **Liability for the Share Forfeited:** A person whose share has been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Company all money which, at the date of forfeiture were presently payable by him to the Company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the share.

- 20.3 **Cancellation of Forfeiture :** The forfeited share may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the Board deem fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board deems fit.
- 20.4 **Evidence of Forfeiture :** Notice of such forfeiture must be given to the member concerned and his name shall be removed from the Register as such holder, and an entry of the forfeiture, with the date thereof shall forthwith be made in the Register. Such entry shall be conclusive evidence of such forfeiture.
- 20.5 **Company's lien on shares:** The company shall have first and permanent lien upon all the shares registered in the name of each member upon dividends due and accruing thereon for these debits, liabilities and engagements solely or jointly with any other person to or with the Company whether the period for the payment fulfillment, or discharge thereof, shall actually arrive or not such lien shall extend to all dividends from time to time declared in respect of such shares.
- 20.6 **Enforcing lien on shares:** The company may sell, in such manner as the Directors think fit any shares on which the Company has a lien, but no sale shall be made unless the debts, liabilities and engagements solely or jointly with any other person to or with the company in respect of which the lien exists are not paid off nor until the expiration of fourteen days after a notice in writing stating and demanding payment of such debts, liabilities and engagements in respect of which the lien exists has been given to the registered holder for the time being, of the share, or the person legally entitled, by the reason of his death or insolvency to the shares. The purchaser of such shares shall be registered as the holder of the shares.
- 20.7 **Application of proceeds to sale:** The net proceeds of any such sale shall be applied in payment or towards satisfaction of such debts, liabilities and engagements in respect of which the lien exists and the residue if any, shall be paid to the person entitled to the shares at the date of the sale.

TRANSFER AND TRANSMISSION OF SHARES

21. The Company shall keep a book to be called the "Register of Transfers" and therein shall fairly and distinctly enter the particulars of every transfer or transmission of any share. Register of

22. The instrument of transfer of any share in the Company shall be in writing in the usual common form or in the following form or as near thereto as circumstances will admit. Instrument

MAGNITUDE BANK LIMITED

I, (hereinafter called the “Transferor”) of (Address of the transferor) in consideration of the sum of Tk..... (Taka.....) by (hereinafter called the “Transferee”) do hereby transfer to the transferee share (or shares) numbered from to in the undertaking called MAGNITUDE BANK LIMITED to hold upon the transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same immediately before the execution hereof and I the transferee do hereby agree to take the said share (or shares) subject to the conditions aforesaid.

as witness of hands theday of
..... 19

WITNESSES

1.....(TRANSFEROR)

2.....(TRANSFEREE)

- 23.1 The Company shareholders initially cannot transfer any share to any person other than the members of the Company. The shares of a particular group of members be first offered to the members of that group. In case the members of that group decline to purchase the said shares it can be offered to the members of the other group. If none of the existing members of the Company is willing to purchase the shares it can then be offered to an outsider. The shares shall be sold at the quoted price on the Dhaka Stock Exchange Ltd. and Chittagong Stock Exchange Ltd. or if such quoted price is not available it can be sold at such price determined mutually and subject to the option of the Auditor of the Company.
- 23.2 The transferees exempted from those restriction imposed under Sub- Exemption of clause (1) of this Article are the father, mother, wife or husband, restrictions sisters, sons, daughters, grandsons and grand-daughters of any intending transferor.

24. Notwithstanding anything elsewhere herein contained in these Articles none of the Sponsors of the Company may transfer any share held by them within a period of less than three (3) years from the date of commencement of business of the Company. Minimum period of holding shares by sponsors
25. Every instrument of transfer shall be left at the office of the Company for the registration accompanied by the certificate of the shares to be transferred and such other evidence as the Board may require to prove the title of the transfer or his right to transfer the shares, and upon payment of the proper fee, the transferee shall (subject to the Board's right to decline to register the same as hereinafter mentioned) be registered as a member in respect of such shares. The Board may waive the requirement of production of any certificate upon evidence satisfactory to them of its loss or destruction or otherwise. Instrument of transfer to be deposited in the Registered Office
26. Every such instrument of transfer shall be signed by the transferor and transferee and the transferor shall be deemed to remain the holder of such shares until the name of the transferee is entered in the Register of Members in respect thereof. To be executed by transferor and transferee
27. The Board may at their sole and absolute discretion decline to register or acknowledge any transfer of shares without requiring to give any reason thereof and shall so decline, in respect of any shares upon which the Company has a lien or whilst any member executing the transfer is (either individually or jointly with any other person or persons) indebted to the Company on any account whatsoever or whilst any money in respect of the shares intended to be transferred or any of them remain unpaid. Such refusal shall not be affected by the fact that the proposed transferee is already a member. The registration of a transfer shall be conclusive evidence of the approval by the Board of the transfer. Directors may refuse to register transfer
28. No transfer shall be made to an infant or a person of unsound mind, but transfer may be made to any body corporate, including a trust. Transfer to infants or person of unsound mind
- 29.1 An application for the registration of the transfer of shares may be made either by the transferor or the transferee. Transfer of shares
- 29.2 For the purpose of transfer of shares under these Articles, notice to the transferee shall be deemed to have been duly given if sent to him by prepaid post at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.
- 29.3 It shall not be lawful for the Company to register the transfer of any share unless proper instrument of transfer duly stamped, where necessary, and executed by the transferor and the transferee has been delivered to the Company along with the script, provided that where it is proved to the satisfaction of the Board of the Company that an instrument of transfer signed by the transferor and the transferee has

been lost, the company may, if the Directors deem fit, on an application in writing made by the transferee and bearing the stamp required by an instrument of transfer, register the transfer on such terms as to indemnify as the Board may deem fit.

- 29.4 If the Company refuses to register the transfer of any shares, the Company shall within two months from the date on which the instrument of transfer is lodged with the Company, send to the transferee and the transferor notice of the refusal.
- 29.5 Nothing in Sub-clause (3) of this Article shall prejudice any power of the Company to register as a share-holder any person to whom the right to any share has been transmitted by operation of law.
30. The instrument of transfer shall after registration be retained by the Company and shall remain in its custody. All the instruments of transfer which the Board may decline to register shall be returned to the persons depositing the same. The Board may cause to be destroyed all transfer deeds lying with the Company after such period as they may determine. Custody of transfer
31. The executors or administrators of a deceased member or a holder of a succession certificate or other legal representative in respect of shares of a deceased member, where he was a sole or only surviving holder, shall be the only person whom the Company will be bound to recognise as having any title to the shares registered in the name of such member and the Company shall not be bound to recognise such executors, administrators or holders unless such executors or administrators or holders shall have first obtained probate or letters of administration as the case may be from a duly constituted Court, provided that in any case where the Board in its absolute discretion think fit, it may dispose of production of probate or letters of administration or succession certificate or other legal representation and under the next Article register the name of any person who claims to be absolutely entitled to the share standing in the name of a deceased member as a member. Title to share of deceased holder
32. Any person becoming entitled to any share in consequence of death, lunacy, bankruptcy or insolvency of any member or by any lawful means other than by a transfer in accordance with these presents, may, with the consent of the Board, which it shall be under no obligation to give upon producing such evidence that he sustains the character in respect of which he reposes to act under this Article or of his title as the Board shall require, either be registered as a member in respect of such shares or may, subject to the regulations and restrictions as to transfer in these presents hereinbefore contained, transfer such shares to some other person. Registration of those entitled to shares otherwise than by transfer

33. The Board shall have the same right to refuse to register a person entitled by transmission to any share or his nominee as if they were the transferee named in an ordinary transfer presented by registration. Refusal to register nominee
34. Every transmission of share shall be verified in such manner as the Board may require and the Company may refuse to register any transmission until the same be so verified or until or unless an indemnity be given to the Company with regard to such registration which the Board at its discretion shall consider sufficient, provided nevertheless that there shall not be any obligation on the Company or the Board to accept any indemnity. Board may require evidence of transmission
35. A fee not exceeding Tk. 20/- (Twenty) only may be charged for each transfer and shall be paid before the registration thereof. Fee on registration of transmission
36. The Company shall incur no liability for giving effect to any transfer of shares made or purporting to be made by the apparent legal owner thereof as shown or appearing in the Register of Members to the prejudice of any person having or claiming any equitable right title or interest to or in the same shares, notwithstanding that the Company may have had notice of such equitable right, title or interest or notice prohibiting registration of such transfer and may have entered such notice or referred thereto in any book of the Company and the Company shall not be bound or required to regard or attend or give effect to any notice which may be given to them of any equitable right, title or interest or be under any liability whatsoever for refusing or neglecting so to do though it may have been entered or referred to in some book of the Company, but the Company shall nevertheless be at liberty to regard and attend to any such notice and give effect thereto if the Board shall so think fit. Company not liable for disregarding notice
37. The Board shall have power on giving seven (7) days notice by advertisement or display in the notice board in the office to close the transfer books of the Company for such periods of time not exceeding in the whole (45) forty five days in each year, but not exceeding (30) thirty days at a time as they may deem fit. Closure of transfer books

INCREASE, REDUCTION AND ALTERATION OF CAPITAL

38. Subject to the provisions of its Memorandum of Association and to the permission of the Bangladesh Bank, the Company may from time to time in General Meeting increase its share capital by the creation of new shares of such amount as it thinks expedient. Increase of capital
39. Such new shares shall be issued upon such terms and conditions and with such rights and privileges as may be directed by the General Meeting and if no direction be given, the Board shall determine. Increase of capital

40. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital and any directive by the Government and/or the Bangladesh Bank, all new shares shall before issue be offered to the Members in proportion, as nearly as circumstances admit, to the amount of the existing shares then held by them. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer if not accepted, will be deemed to be declined and after the expiration of that time or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the Board may dispose of the same in such manner as they think most beneficial to the Company. The Board may likewise so dispose of any new shares which by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares cannot, in the opinion of the Board, be conveniently offered under this Article.
41. In applying Article 40 above, while allotting any new shares, the proportions between the two different groups of share holder as stated in Article 40 above shall be strictly maintained, unless the same is waived by the resolution sanctioning the increase.
42. Except so far as otherwise provided by the conditions of issue or by these present, any capital raised by the creation of new shares shall be considered part of the original ordinary capital and shall be subject to the provisions herein contained with reference to subscription, transfer and transmission, voting and otherwise.
43. Subject to section 59 of the Act, the Company may by special resolution and with the prior permission of the Bangladesh Bank reduce its share capital.
44. Subject to section 53 of the Act, the Company may in General Meeting by ordinary resolution and with the prior permission of the Bangladesh Bank alter the conditions of the Memorandum as follows:
- 44.1 to consolidate and divide all or any of its share capital into shares of larger amount than its existing shares:
- 44.2 to sub-divide its shares or any of them into shares of smaller amounts than originally fixed by the Memorandum;
- 44.3 to cancel any shares which at the date of such general meeting has not been taken or agreed to be taken by any person and diminish the amount of the shares so cancelled.

JOINT HOLDERS

45. Where two persons are registered as the holders of any share, they shall be deemed to hold the same as joint holders with benefits of survivorship, subject to the following and other provisions contained in these presents:

- 45.1 the Company shall be entitled to decline to register more than two (2) persons as the joint holders of any share; Company may refuse to register more than 2 persons
- 45.2 the joint holders of any share shall be liable individually as well as jointly for and in respect of all calls and other payments which ought to be made in respect of such share;
- 45.3 on the death of any such joint holders, the survivor shall be the only person recognized by the Company as having any title to the share, but the Board may require such evidence of death as they may deem fit and nothing therein contained shall be taken to release the estate of a deceased joint holder from any liability on shares held by him jointly with any other person; Title of survivors
- 45.4 any one of such joint holders may give effectual receipt for any dividend or other money payable in respect of any such share; Receipt of one sufficient
- 45.5 only the person whose name stands first in the Register of Members as one of the joint holders of any share shall be entitled to delivery of the certificate relating to such share or to receive Notice from the Company and any Notice given to such person shall be deemed effective Notice to all the joint holders; Delivery of certificate and giving Notice to first named holder
- 45.6 any one of two joint holders may vote at any meeting either personally or by attorney or by proxy in respect of such share as if he was solely entitled thereto and if more than one of such joint holders be present at any meeting personally or by proxy or by attorney, then that one of such persons so present whose name stands first or higher as the case may be, on the Register in respect of such share shall alone be entitled to vote in respect thereof, but the other or others of the joint holders shall be entitled to be present at the meeting. Several executors or administrators of a deceased member in whose (deceased member's) sole name a share stands shall for the purpose of this clause be deemed joint holders.

BORROWING POWERS

46. Subject to the provision of these presents and any terms and conditions at any time imposed by the Bangladesh Bank, the Board may at their discretion borrow any sum or sums of money for the purpose of the Company.
47. The Board may raise and secure the payments of such sum or sums in such manner and upon such terms and conditions in all respects as it may think fit and in particular by the issue of bonds (Perpetual or Redeemable) debentures or debenture stocks or any mortgage or charge or other security on the undertaking of the whole or any part of the property of the Company. Condition on which money may be borrowed

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| 48. | Any bond, debenture, debenture stock or other security issued or to be issued by the Company shall be under the control of the Board who may issue them upon such terms and conditions and in such manner and for such consideration as they shall consider to be for the benefit of the Company. | Bond debenture etc. to be subject to control of Board |
| 49. | Debenture, debenture stock, bond or other security may be made assignable free from any equities between the Company and the person to whom the same may be issued. | Security |
| 50. | Any bond, debenture, stock of other security may be issued at a discount, premium or otherwise and with any special privilege as to voting at General Meeting of the Company or otherwise howsoever. | Issue at discount etc. or with special privilege |
| 51. | The Board shall cause a proper Register to be kept in accordance with Section 123 of the Act of all mortgages, debentures and charges specifically affecting the property of the Company, and shall cause the requirement of any laws in that behalf to be duly complied with in so far as they fail to be complied with by the Company. | |

LOANS AND ADVANCES TO DIRECTORS

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| 52. | The Company shall not make any loan or advance on the security of its own share or grant unsecured loan or advance to any of its Directors or to firms or private companies in which it or any of its Directors is interested as partner or managing agents, or to any individuals, firms or private companies in cases where any of the Directors is a guarantor. | Loans And advances to Directors |
| 53. | The Company shall not allow loans or advances to any of its Directors to their proprietary or partnership firms or to private limited companies in which they have any interest, except in the following cases: | |
| 53.1 | They may be allowed to take loans and advances from the company up to Tk. 10,00,000/- (Taka ten lacs) each under normal banking practice: | |
| 53.2 | Subject to any restriction as per law in force and subject to the approval of Bangladesh Bank they may be allowed to take loans or advances to any amount beyond Taka 10,00,000/- (Taka ten lacs) each only; provided, however, that in all such cases the approval of the majority of the Directors, excluding the Director concerned, shall be required. | |
| 53.3 | The Directors collectively will not be able to take loans and advances aggregating to more than ten (10) percent of the total loanable fund of the Company as per law in force. | |

CREDIT RESTRICTION

- 54.1 All credit restrictions imposed by the Bangladesh Bank (including targets in the priority sectors) from time to time shall be followed by the Company. Credit Restrictions
- 54.2 The Capital and Reserve of the Company shall at no time be less than the specified amount of the deposit liability as fixed by the Bangladesh Bank from time to time.
55. The Company shall within a period of not less than one (1) month or more than six (6) months from the date at which the Company is entitled to commence business hold a General Meeting of the Members of the Company, which shall be called the Statutory Meeting. Statutory Meeting

GENERAL MEETING

56. The Board shall at least twenty one (21) days before the day on which the Statutory Meeting is held forward a report certified by not less than two (2) Directors of the Company or by the Chairman of the Board of Directors if so authorised in this behalf by the Board of Directors to every member of the Bank, which shall state:
- 56.1 the total number of shares allotted, distinguishing shares allotted as fully paid up otherwise than in cash and stating the consideration for which they have been allotted;
- 56.2 the total amount of cash received by the Company in respect of all the shares allotted;
- 56.3 an abstract of the receipts of the Company and of payments made thereout upto a date within seven (7) days of the date of report, exhibiting under distinctive headings the receipts of the Company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of preliminary expenses of the Company showing separately any commission or discount paid on the issue or sale of shares;
- 56.4 the names, addresses and descriptions of the Directors, Auditors and Managers, if any, and the Secretary of the Company and the changes, if any, which have occurred, since the date of incorporation.
- 56.5 the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification;
- 56.6 the extent to which underwriting contracts, if any have been carried out;
- 56.7 the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any persons.

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| 57. | The statutory report shall, so far as it relates to the shares allotted by the Company, and to cash received in respect of such shares and to the receipts and payments of the Company, be certified as correct by the auditors of the Company. | Report to be certified by auditors |
| 58. | The Board shall cause a list showing the names, descriptions and addresses of the members of the Company and the number of shares held by them respectively to be produced at the commencement of the Statutory Meeting and to remain open and accessible to members of the Company during the continuance of the meeting. | List of Members to be available at Statutory Meeting |
| 59. | The members of the Company present at the Statutory Meeting shall be at liberty to discuss any matter relating to the formation of the Company or arising out of the statutory report, whether previous Notice has been given or not, but no resolution of which Notice has not been given in accordance with these Articles may be passed. | Business to be conducted in statutory Meeting |
| 60. | The meeting may be adjourned from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with the Article either before or subsequent to the former meeting may be passed and the adjourned meeting shall have the same powers as the original meeting. | Adjournment of Statutory Meeting |
| 61. | A general Meeting of the Company shall be held within eighteen (18) months from the date of incorporation of the Company and thereafter once at least in every calendar year at such time and place as may be determined by the Board provided that no longer interval than fifteen (15) months shall be allowed to elapse Ordinary General Meeting. Such general meeting shall be called Ordinary Meetings. All other meetings of the Company other than the Statutory Meeting shall be Called Extra-Ordinary Meeting. | Ordinary Meeting |
| 62. | The Board may call an Extra-Ordinary Meeting whenever it may deem necessary. | Board may call Extra-Ordinary Meeting on requisition |
| 63.1 | The Board shall on the requisition of the holders of not less than one-tenth (1/10 th) of the issued capital of the Company call an extra-Ordinary Meeting of the Company. | Calling of Extra-Ordinary Meeting on requisition |
| 63.2 | The requisition must be signed by the requisitionists and be deposited at the office of the Company and may consist of several documents in like form, each signed by one or more requisitionists, in the case of joint holders of shares, all such holders shall sign the requisition. | |
| 63.3 | If the Board does not proceed within twenty one (21) days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists or majority of them in value may | |

- themselves call the meeting but in either case, any meeting so called shall be held within three (3) months from the date of the deposit of the requisition.
- 63.4 Any meeting called under this Article by the requisitionists shall be called in the same manner as nearly as possible as that in which meetings are to be called by the Board.
- 63.5 Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board to convene a meeting shall be repaid to the requisitionists by the Company and any sum so repaid shall be retained by the Company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the Directors as were in default.
64. At least Fourteen (14) days Notice is required for every General Meeting, Ordinary or Extra-Ordinary (other than a meeting for the passing of a special resolution) and by whomsoever called specifying the day, hour and place of the meeting together with a statement of the business to be transacted at the meeting and in case it is proposed to pass an extra-ordinary resolution, the intention to propose such resolution as an extra-ordinary resolution shall be given to the persons entitled under and in the manner provided by those presents. Notice of meeting
65. Where it is proposed to pass a special resolution twenty one (21) days notice specifying the intention to propose the resolution as a special resolution and specifying the date, hour and place of the meeting and the nature of the business to be transacted thereat shall be given to the persons entitled under and in the manner provided by the presents. Notice of special resolution
66. With the consent of all members entitled to receive Notice of a meeting or to attend and vote at any such meeting, a meeting may be convened by such shorter Notice as the members may approve. Shorter Notice consent
67. any accidental omission to give Notice to or non-receipt thereof by any member shall not invalidate the proceedings or any resolution passed at any such meeting. Accidental omission would not invalidate
68. a Director or member for the time being absent from his country of residence shall be deemed to have been properly notified if the Notice is sent to his address registered with the Company. Notice to Director/Member absent from country to residence

PROCEEDING AT GENERAL MEETING

69. Fourteen (14) members entitled to vote and be present in person shall form a quorum for a General Meeting and no business shall be transacted at any General Meeting unless the quorum requisite be present at the commencement of the business. Quorum of general meeting

70. No business shall be discussed at any General Meeting except the election of a Chairman whilst the chair is vacant. Business when chair is vacant
71. "The Chairman shall be entitled to take chair at every general meeting. In his absence or if he shall also not be present within half an hour after the time appointed for holding such meeting or is unable to be present due to illness or any other cause, First Vice Chairman shall preside over the meeting. In the absence of both the Chairman and First Vice Chairman, the Second Vice Chairman shall preside over the meeting. In the absence of all of them, Directors shall choose one of the Directors to take the Chair." Chairman of the meeting
72. If within half an hour after the time appointed for the holding of a General Meeting a quorum be not present, the meeting if convened on the requisition of shareholders shall be dissolved and in every other case shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Board may by Notice to the shareholders appoint. If at such adjourned meeting a quorum be not present, those members present shall form the quorum and may transact the business for which the meeting was called. If quorum is not present
73. The Chairman with the consent of the meeting may adjourn any meeting from time to time and from place to place. Chairman may adjourn meeting
74. The Board shall subject to article 61 have power to postpone any General Meeting except any general meeting called pursuant to the provision of Article 63. Power of Directors to postpone General Meeting
75. Except as provided by these presents, in the case of the Statutory Meeting no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Business at adjourned meeting
76. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by any five (5) members present in person or by proxy or by the Chairman of the meeting or by any other member or members holding not less than one tenth (1/10th) of the issue capital carrying voting rights and unless a poll is so demanded, a declaration by the Chairman that a particular majority, or lost, and an entry to that effect recorded in the book of the proceedings of the Company shall be conclusive evidence of the fact without further proof of the number or proportion of the votes recorded in favour of or against that resolution.

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| 77. | If a poll is demanded as aforesaid, it shall be taken in such manner and at such time and place as the Chairman of the meeting directs and either at once or after an interval or adjournment and the result of the poll shall be deemed to be the resolution of the meeting at which the poll demanded. The demand for a poll may be withdrawn. | Result of poll shall be deemed to be the resolution |
| 78. | In the case of an equality of votes, whether on a show of hands or at a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a casting vote in addition to his own vote or votes (if any) to which he may be entitled as a member. | Equality of votes |
| 79. | Any poll duly demanded on any question of adjournment or otherwise shall be taken at the meeting and without adjournment. | Poll to be taken without adjournment |
| 80. | The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question for which the poll has been demanded. | Demand of poll not to prevent other business |
| 81. | Minutes shall be made in books provided for the purpose of all resolutions and proceedings at general meetings and any such minutes, if signed by the Chairman of the meeting in which it relates or by the person who shall provide as Chairman at the next succeeding meeting, shall be receivable as evidence of the facts therein stated without further proof. | Minutes of general meeting |
| 82. | The books containing the minutes of proceeding of general meetings of the Company shall be kept at the office of the Company and shall during business hours, subject to such reasonable restrictions as the Company may from time to time impose so that not more than two (2) hours in each day be allowed for inspection, of any member without charge. | Inspection of minute book |
| 83. | Any member shall at any time after seven (7) days from the meeting be entitled to be furnished within seven (7) days after he has made a request in the behalf to the Company with a copy of any minutes referred to above at a charge to Tk. 10/- (ten) for every page. | Copies of minutes |
| 84. | Subject to Article 85 hereinafter: | Votes |
| 84.1 | Upon a show of hands every member entitled to vote and be present in person or by attorney or proxy shall have one (1) vote. | |
| 84.2 | Upon a poll, every member entitled to vote and be present in person or by attorney or proxy shall have one (1) vote for every share held by him. | |
| 85.1 | The voting rights of the shareholders shall be strictly proportionate to the number of shares held by them respectively. | Voting right |
| 85.2 | Unless and until exemption is given from the provisions of Section 14 (1) (one) of the Banking Companies Act, 1991 then irrespective of the number of shares held by any member, the voting rights of one shareholder shall in no case exceed five (5%) percent of the aggregate voting rights of all the shareholders. | Limitation of voting right |

86. A representative of a corporation which is a member of the Company duly authorised by a resolution of the Directors of such corporation may vote on a show of hands and on a poll as if he were an individual member of the Company. The production at the meeting of a copy of such resolution duly signed by a Director of such corporation and certified by him as being a true copy the resolution shall be accepted by the Company as sufficient evidence of the validity of his appointment. Voting by Corporation
87. Votes may be given either personally or by attorney or by proxy through any person or persons or in the case of corporation, by a representative duly authorised as aforesaid. Votes may be given through proxy or attorney
88. The instrument of appointment of a proxy shall be in writing under the hand of the appointer or his attorney or, if such appointer is a company or corporation, under its common seal or under the hand a person duly authorised by such company or corporation in that behalf, or under the hand of its attorney who may be the appointer. Appointment of proxy
- 89.1 No person shall act as a proxy unless the instrument of his appointment and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power of authority has been deposited at the office at least seventy two (72) hours before the time for holding the meeting at which the person named in the instrument of proxy proposes to vote, and in default, the instrument appointing the proxy shall not be treated as valid.
- 89.2 No attorney shall be entitled to vote unless the power of attorney or other instrument appointing him as attorney or a notarially certified copy thereof has either been registered in the records of the Company at any time not less than seventy two (72) hours before the time or the meeting at which the attorney proposed to vote or is deposited at the office of the Company not less than seventy two (72) hours before the time of such meeting as aforesaid.
- 89.3 Notwithstanding that a power of attorney or other authority has been registered in the records of the Company, the Company may be notice in writing addressed to the member or the attorney at least forty eight (48) hours before the meeting require him to produce the original power of attorney or authority and unless the same is thereupon deposited with the Company, the attorney shall not be entitled to vote at such meeting unless the Board in its absolute discretion excuses such non-production and deposit.
90. If any such instrument of appointment be confined to the object of appointment a proxy or substitute for voting at meeting of the Company, it shall remain permanently or for such time as the Board may determine in the custody of the Company and, if embracing other objects, a copy thereof, examined with the original, shall be delivered to the Company to remain in the custody of the Company. Custody of the Instrument

91. Every instrument of proxy whether for a specified meeting or otherwise shall, as nearly as circumstances will admit be in the form or to the effect following:

MAGNITUDE BANK LIMITED

I, ... of ... being a member of **MAGNITUDE BANK LIMITED** do hereby appoint ... of ... failing ... of ... as proxy may attend and vote for me and on my behalf at the (ordinary or Extra- ... 199 ... and at any adjournment thereof.

AT WITNESS MY HAND THIS ...
DAY OF ... 19 ...
... Signed by the said
...

92. No objection shall be made to the validity of any vote except at the meeting or poll, at which such vote shall be tendered and every vote whether given personally or by proxy not disallowed at such meeting or poll shall be deemed valid for all purposes whatsoever of such meeting or poll. Time for objection to votes
93. The Chairman of any meeting shall be the sole judge of the validity of every vote tendered at such meeting. The Chairman present at the taking of a poll shall be the sole judge of the validity of every vote tendered at such poll. Chairman sole judge
94. Any member whose name is entered in the Register of Member of the Company shall subject to these presents at all General Meetings of the Company enjoy the same rights and be subject to the same liabilities as all other members of the same class. Equal right of Members

BOARD OF DIRECTORS

95. Until otherwise determined by the Company in General Meeting, the number of Director shall not be more than 21 and not less than 8
- 95.1 From Group-A: Sponsors ... 19 (Nineteen)
- 95.2 From Group B: General Public ... 02 (Two)
96. All the following sponsor shareholders shall constitute the first Board of Directors of the Company:
1.
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- 21.....

- 96.1 In future the successors of the above directors or their legal heirs/nominees will be eligible to become directors as per law.
- 96.2 The Directors representing Group-A shall be elected by the existing sponsor Directors or by their nominees till Group-B Directors are elected by the members of the Company after floating Shares
- 97.1 The qualification of Director of the company (other than Directors representing particular shareholders holding shares of the requisite value) shall be the holding in his own name unencumbered shares in the Company of the nominal value of not less than Tk. 10,000/- (Taka ten thousand). A Director may however, act before acquiring the qualification shares, but shall in any case acquire the qualification shares within two (2) months from the date of his election. Qualification of Directors
- 97.2 Chairman shall be from among the persons of Group-A Shareholders or from persons nominated by Group-A Shareholders.
98. Subject to Section of the Act, Board shall at the request of any Director (hereinafter called the "Original Director") appoint the person nominated by the Original Director to be his "Alternate Director" and such appointment shall have effect from the date of nomination of the Alternate Director by the Original Director and the former shall while he holds office as Alternate Director be entitled to notice of meetings of the Directors and in the absence of the Original Directors, to attend and vote there at, but he shall not require any qualification shares and shall ipso facto vacate office as and when the Original Director vacates or the Alternate Director is removed from office at the request of the Original Director, and any appointment or removal under this article of an Alternate Director shall be effected by the Board upon the request in writing to the Board under the hand of the Original Director whom the Alternate Director is to represent or represents. Alternate Director
99. Every person acting as an Alternate Director shall be an Officer of the Company and shall not be deemed to be the agent of the Director whom he presents. Alternate Director Officer of the Company
100. The Directors shall be entitled to a fee to be decided by the Board of Directors for each meeting of the Board/Committee attended by them.
101. The Board may allow and pay to any Director who is not ordinarily a resident of the place where a meeting is held and who shall come to such place for the purpose of attending the meeting such sum as the Board may consider fair compensation for travelling and living expenses in addition to his remuneration as above specified and the Board may from time to time fix the remuneration to be paid to any member or members of their body constitution a committee appointed by the Board in terms of these presents and may pay the same. Directors from outside may get compensation

102. If any Director being willing is called upon by the Board to perform extra services or to make any special exertions from otherwise for any or the purposes of the Company, the Company may remunerate such Director either by a fixed sum or otherwise as may be determined by the Board and such remuneration may be either in addition to or in substitution for his remuneration above provided. Special remuneration to Director going out and for extra services
103. Subject to these presents, the Board shall have power at any time and from time to time to appoint any person a Director to fill a casual vacancy or as an addition to the Board, but the total number of Directors shall not any time exceed the maximum number fixed under Article 95 above. Any Director so appointed shall hold office only until the next following Ordinary General Meeting of the Company but shall be eligible for re-election. While making such appointment, the proportion of Directors appointed or nominated by the Company and categories of shareholders shall be maintained. The Board may fill vacancy and duration of such office
104. Subject to the provisions of the Act, the continuing Directors may act notwithstanding any vacancy in their body, but so that, in the number falls below the minimum fixed the Board shall not, except in emergencies for the purposes of filling up vacancies or for summoning a General Meeting of the Company, act so long as their number is below the minimum aforesaid, be may so act in the above mentioned circumstances notwithstanding the absence of a necessary quorum under article 120 hereof. Directors may act notwithstanding vacancy
105. The office of the Director shall be vacated if: Director vacating office
- 105.1 he fails to obtain within the time specified in Article 97 or any time thereafter ceases to hold the share qualification, if any, necessary for his appointment; or
- 105.2 he is found to be of unsound mind by a court of competent jurisdiction; or
- 105.3 he is adjudged an insolvent; or
- 105.4 he absents himself from three (3) consecutive meetings of the Directors or from all meetings of the Directors for a continuous period of three (3) months, whichever is the longer, without leave of absence from the Board of Directors; or
- 105.5 he acts in contravention of section 105 of the Act, or
- 105.6 he or any firm of which he is a partner of any Private Company of which he is a Director accepts a loan or guarantee from the Company in contravention of Section 103 of the Act;
- 105.7 he resigns office by notice in writing addressed to the Company or to the Directors, or
- 105.8 any nominated or appointed Director is removed for any reason by the Company share-holders by whom he was nominated or appointed; or

- 105.9 he is a Director in any other banking company in Bangladesh without permission of the Bangladesh Bank;
- 105.10 he accepts or holds office of profit under this Company other than that of the Managing Director or Legal Adviser or Technical Adviser or Adviser or Banker.

ROTATION OF DIRECTORS

106. At the first Ordinary General Meeting of the Company all the Directors shall retire from office. At the Ordinary General Meeting in every subsequent year one-third (1/3rd) of the Directors for the time being (other than the Chairman and the Managing Director) or if their number is not multiple of three (3) then the number nearest to one-third (1/3rd) shall retire from office. Directors to retire annually how determined
107. Of those subject to retire by rotation, the Directors to retire by rotation every year shall be those who have been longest in office since their last election, but as between persons who become Directors on the same day, those who are to retire shall unless they otherwise agree among themselves be determined by election. Which Director to retire
108. A Director retiring by rotation shall be eligible for reelection by the respective group of shareholders so that the ratio mentioned in Article 95 is at all times maintained. But the Sponsor shareholders under group 'A' shall be elected as Director before reelection of Directors from shareholders of the group 'B'. Retiring Director eligible for re-election
109. If at any meeting at which an election of Directors retiring by rotation ought to take place, the posts of the vacating Director are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place and, if at the adjourned meeting the posts of the vacating Directors are still not filled up, the vacating Directors or such of them as have not had their posts filled shall be deemed to have been re-elected at the adjourned meeting. Retiring Directors to remain in office till successors appointed
110. "Subject to these presents and the Act, the Company may by Extra Ordinary Resolution remove any Director before the expiration of his period of office and may by Ordinary Resolution appoint another person in his place, subject to the ratio stated in Article 95 at all times being maintained. The person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected Director." Removal of Directors
111. No person, not being a Director, retiring by rotation, shall be eligible for election to the office of Director at any General Meeting unless he or his authorised agent has at least seven (7) clear days before the meeting submitted at the office a notice in writing under his hand or under the hand of such agent signifying his assent to his candidature of the office of Director. Notice of candidate for office of Director except in certain cases

CHAIRMAN AND VICE CHAIRMAN

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| 112.1 | The Director shall elect a chairman either from group-A shareholders or from any distinguished persons nominated by the Group-A shareholders. The Chairman must be a Bangladeshi National. | Chairman |
| 112.2 | Remuneration of the Chairman may be decided by the Board of Directors as per rule in force. | Remuneration of Chairman |
| 112.3 | Mr. Md. Abdul Jalil shall be the First Chairman of the Company and shall confirm to hold office for a term of three years which may be extended or renewed from time to time. | |

VICE CHAIRMAN

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| 112.4 | The Board shall elect two Vice Chairmen from amongst the Directors for such period as the Directors may decide. Out of the two Vice Chairmen one shall be termed as First Vice Chairman and another shall be termed as Second Vice Chairman. | Meeting to be presided over by Chairman |
| 113. | The Chairman shall preside over all meetings of the Board of Directors. In his absence, the First Vice Chairman shall preside over the meetings. In the absence of both the Chairman and First Vice Chairman, the Second Vice Chairman shall preside over the meetings. In the absence of all of them, the Directors shall choose any Director to preside over the meetings. | |
| 114. | Subject to these presents, all questions arising at any meeting of the Board of Directors shall be decided by a majority of votes cast and in case of equality of votes, the Chairman of the meeting shall have a second or casting vote. | Voting by the Company Directors |

PROCEEDING OF DIRECTORS

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| 115. | The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit. | Meeting of Directors |
| 116. | The Chairman may at any time and the Managing Director or such Officer of the Company as may be authorised by the Board shall upon the request of a Director convene a meeting of the Directors. | When meeting to be convened |
| 117. | Notice of the meeting given to a Director to the Address registered with the Company shall be deemed to be valid notice. | Period of Notice |
| 118. | Generally, 7 (Seven) days notice shall be given for meetings of the Directors. In case of emergency, the Chairman may call a meeting at a shorter notice at his discretion.
(Amended by EGM held on May 28, 2006) | Period of Notice |
| 119. | Any accidental omission to give notice of any meetings of the Directors shall not invalidate any resolution passed at any such meeting. | Omission to given notice |

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| 120. | “The quorum for the meetings of the Board of Directors shall be the presence of 5 (Five) Directors.”
(Amended by EGM held on May 28, 2006) | Quorum |
| 121.1 | The resolution of the Board shall be passed by a majority pursuant to article 114 thereof. | Resolution of the Directors |
| 121.2 | A resolution by circulation signed by all the Directors of the Company shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted. | Resolution by circulation |
| 122. | The Board may appoint an Executive Committee, any Committee or Committees (standing or otherwise) to assist it in discharge of its functions. | Appointment of Committee |
| 123. | All acts done in any meeting of the Board or by a Committee of Directors or by any person acting as a Director shall, notwithstanding that it may afterwards be discovered that there was some defect and or lapse in the appointment of any such Director or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such Director or person had been duly appointed and was properly qualified. | Acts of Board or Committees valid notwithstanding defect of appointment |
| 124. | The Board shall cause minutes to be duly entered in a book provided for the purpose; | Minutes of proceeding of the Company and of the Board and Committee to be kept |
| 124.1 | of the names of the Directors present at each meeting of the Board, and of any Committee appointed by the Board: | |
| 124.2 | of all orders made by the Board and Committee and | |
| 124.3 | of all resolutions and proceedings of meetings of the Board and Committee. | |
| 125. | All such minutes shall be signed by the Chairman of the meetings recorded or by the person who shall preside over as Chairman at the next succeeding meeting and all minutes purporting to be so signed shall for all purposes be prima facie evidence of actual passing of the resolutions recorded and the actual and regular transaction or occurrence of the proceedings so recorded and of the regularity of the meeting at which the same shall appear to have taken place. | By whom minutes to be signed and the effects of minutes recorder |

POWER OF DIRECTORS

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| 126. | The business of the Company shall be managed by the Board who may pay all expenses of getting the Company registered and may exercise all such powers and do all such acts and things as the Company by its Memorandum of Association or otherwise authorised to exercise and do and are not by these presents or by the act directed or required to be exercised or done by the Company in General Meeting subject to nevertheless to the Provisions of the Act | General powers of Company vested in the Board of Directors |
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and of the Memorandum of Association and to these presents and to any regulations not being inconsistent with the Act or the Memorandum of Association or these presents from time to time made by the Company in General Meeting, provided that no such regulation shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.

- 127. Without prejudice to the general powers conferred by last preceding Article and the other powers conferred by these presents and so not in any way to limit or restrict any or all of these powers, it is hereby expressly declared that the Board shall have the following powers;
- 127.1 to pay the cost, charges and expenses preliminary and incidental to the promotion, formation, establishment and registration of the Company.
- 127.2 to purchase or otherwise acquire for the Company and property, right or privileges which the Company is authorised to acquire at such price and generally on such conditions they think fit;
- 127.3 at its discretion to pay for any property or rights acquired by or services rendered to the Company, either wholly or partially in cash or in shares, bonds, debentures, debenture stocks or other securities or the Company and any such shares shall be issued as fully paid up, and any such bonds debentures, debenture stocks or other securities may be either specifically charged upon all or any part of the property of the Company and its uncalled capital not so charged;
- 127.4 to insure and keep insured against loss or damage by fire or otherwise for such period and to such extent as it may think proper all or any part of the buildings, machinery, goods, stores, produce and other real and movable property of the Company either separately or conjointly; also to insure and keep insured any portion of the goods, produce, machinery and other articles imported or exported by the Company and sell, assign, surrender or discontinue any policies of assurance effected in pursuance of this power;
- 127.5 to open accounts with any bank or bankers or with any company, firm or individual and to pay money into and draw money from any such account from time to time as the Board may think fit;
- 127.6 to secure the fulfillment of any contract or engagements entered into by the Company by mortgage or charge of all or any of the property of the Company and its unpaid capital for the time being or in such other manner as it may think fit;
- 127.7 to attach to any shares to be issued as the consideration or part of the consideration for any contract with or property acquired by the Company or in payment for services rendered to the Company such conditions as to the transfer thereof as it may think fit;

- 127.8 to accept from any member on such terms and conditions as shall be agreed as surrender of his shares of stock or any part thereof;
- 127.9 to appoint any person or persons, whether incorporated or not to accept and hold in trust for the Company any property belonging to the Company or in which it is interested, or for any other purpose and to execute and do all such acts and things as may be requisite in relation to any such trust and to provide or remuneration of such trustee or trustees;
- 127.10 to institute, conduct, defend, compound or abandon any legal proceeding by or against the Company or its Officers or otherwise concerning the affairs of the Company, and also to compound and allow time for payment or satisfaction of any debt due or of any claim or demand by or against the Company;
- 127.11 to refer any claim or demand by or against the Company to arbitration and observe and perform the awards;
- 127.12 to act on behalf of the Company in all matters relating to bankrupts and insolvent;
- 127.13 to make and give receipts, release and other discharges for money payable to the Company and for the claims and demands of the Company;
- 127.14 to determine from time to time who shall be entitled to sign on the Company's behalf bills, Promissory notes, receipts acceptances, endorsements, cheques, dividend warrants, releases contracts and documents;
- 127.15 to invest and deal with any of the money of the Company not immediately required for the purpose thereof upon such securities and in such manner as they may think fit and time to time to vary or realise such investments;
- 127.16 to give to any Director, Officer or other person employed by the Company an interest in any particular business or transaction either by way of commission on the gross profit thereon or otherwise or a share in the general profits of the Company and such interest, commission or share of profits shall be treated as a part of the working expenses of the Company;
- 127.17 to provide for the welfare of employees or ex-employees of the Company and the wives and families or the dependents or connection of such person by building or contributing to the building of houses or dwellings or by grants of money, pensions allowances, bonus or other payments or by creating and from time to time subscribing or contributing to provident or other associations, institutions, funds or trusts and by providing or subscribing towards places of instruction and recreation, hospitals and dispensaries, medical and other attendance and other assistance as the Company shall think fit;

- 127.18 to subscribe or grant money for any national, charitable, benevolent, public general or useful object or for any exhibition or to any institution, club, society or funds;
- 127.19 purposes as the Board may in their absolute discretion think conducive to the interest of the Company and the Board may invest the several sums so set a side or so much thereof as required to be invested upon such investments (subject to the restrictions imposed by the Act) as the Board may think fit;
- 127.20 to appoint and at their discretion remove or suspend such Manager or Managers, Secretary or Secretaries, others, clerks, employees, agents, advisers and consultants for permanent, temporary or special services as they may from time to time think fit and to determine their powers and duties and fix their salaries, emoluments and remuneration and to require security in such instances and to such amount as they may think fit. And also without prejudice as aforesaid, from time to time to provide for the management and transaction of the affairs of the Company in such manner as they think fit and the provisions constituted in sub-clause (23) and (24) following shall be without prejudices to the general powers conferred by this sub-clause;
- 127.21 to comply with the requirements of any local law which in their opinion it shall in the interest of the Company be necessary or expedient to comply with;
- 127.22 from time to time and at any time to establish any local Board for managing any of the affair of the Company and to appoint any persons to be members of any local Boards and to fix their remuneration. And from time to time and at any time delegate to any person so appointed any of the powers, authorities and discretion for the time being vested, in the Board, other than their power to make calls, and to authorise the members for the time being of any such local Board, or any of them to fill up any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Board may at any time remove any person so appointed and may annual or vary any such delegation. Any such delegate may be authorised by the Board to sub-delegate all or any of the powers authorities and discretion for the time being vested in them;
- 127.23 at any time and from time to time by power of attorney to appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretion (not exceeding those vested in or exercisable by the Board under these presents) and/or such period and subject to such

conditions as the Board may from time to time think fit, and any such appointment if the Board think fit, may be made in favor of the members of any of the members of any local Board established as aforesaid, or in favor of any Company or firm or the members, directors, nominees or managers of any company or firm or otherwise in favor of any fluctuating body or persons, whether nominated directly or indirectly by the Board, and any such power of attorney may contain such powers for the protection or convenience of persons dealing with such attorneys as the Board may think fit;

127.24 general subject to the provisions of the act and these presents to delegate the powers, authorities and discretion vested in the Board to any person, firm, company or fluctuating body of persons as aforesaid;

127.25 any such delegate or attorney as aforesaid may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretion for the time being vested in him;

127.26 to enter into all such negotiations and contracts and to rescind all such contracts and execute and do all such acts, deeds and things in the name and on behalf of the Company as they may consider expedient for or in relation to any of the matters aforesaid or otherwise for the purpose of the Company; and

127.27 to make rules consistent with the act and these presents to provide for all or any matters for which provision may be necessary or convenient for the purpose of giving effect to the provisions of these presents and the business functions, management and affairs of the Company.

128. The Board from time to time may delegate all or any of their power and authorities as aforesaid to Executive Committee, Chairman, Managing Director and other Officers of the Company as it may decide. Delegation of power of the Board

MANAGING DIRECTOR

129.1 The Managing Director of the Company shall be its Chief Executive who shall be appointed by the Board of Directors. The post of the Chief Executive of the Company may suitably be redesignated by the Board of Directors as and when it is felt necessary.

129.2 The Managing Director shall be selected from amongst suitable persons having at least twenty (20) years experience as a banker in responsible position.

129.3 The Managing Director shall hold office for term of not more than 3 (three) years which may be extended or renewed from time to time.

- 129.4 The Managing Director shall be ex-officio Director of the Company
- 129.5 The Managing Director shall not be required to hold any qualification share nor shall be subject to retirement by rotation or taken into account for determining the rotation for retirement of Directors.
- 129.6 The Managing Director shall exercise the powers as conferred upon him by the Board.

RESERVE AND DIVIDEND

- | | | |
|------|--|---|
| 130. | The Board shall in every year calculate the net profit of the Company for the year remaining after deduction of all general expenses (including provisions for payment of taxes and allocations to any appropriate reserves as may be decided or required by the Government or Bangladesh Bank) an dividend may be paid from the balance of net profit available. | Reserved and dividend |
| 131. | The profit of the Company shall be divisible among the members in proportion to the shares held by them respectively. | Division of profits |
| 132. | The Company in General Meeting may declare a dividend to be paid to the members according to their respective rights and interest in the profit and may fix the time for payment. | The Company in General Meeting may declare a dividend |
| 133. | No larger dividend shall be declared than is recommended by the Board, but the Company in General Meeting may declare a smaller dividend. No dividend shall be payable except out of the profit of the year of any other undistributed profits and no dividend shall carry interest as against the Company, the declaration of the Board as to the amount of the net profit of the Company shall (subject to the certificate of the auditors) be conclusive. | Power of the Board to limit dividend |
| 134. | The Board may from time to time pay to the members such interim dividends as in their judgment the position of the Company justifies. | Interim dividend |
| 135. | The Board shall (subject to permission from relevant authorities) remit any dividend in foreign exchange after payment of local taxes if any, against shares subscribed in the foreign currencies. | Remittance of dividend in foreign exchange |
| 136. | A transfer of share shall not pass the right to any dividend declared thereon before the registration of the transfer. | Dividend on transferred shares |
| 137. | Unless otherwise directed, any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled or in case of joint holders to that one of them first named in the Register of Members in respect of the joint holding, every such cheque shall be made payable to the order of the person to whom it is sent. The Company shall not be liable or | Dividend how remitted |

responsible for any cheque or warrant loss in transmission or for any dividend lost to the members or persons entitled thereto by the forged endorsement of any cheques or warrant or the fraudulent or improper recovery thereof by an other means.

138. Dividends unclaimed for one (1) year after having been declared may be invested otherwise for the benefit of the Company until claimed and all dividend unclaimed for six (6) years after having been declared may be forfeited by the Board for the benefit of the Company provided, that the Board may at any time annual such forfeiture and pay such dividend.
- Unclaimed dividends

CAPITALISATION

139. Subject to the approval of the Bangladesh Bank as necessary, the Company in General Meeting may resolve that any money, investments or other assets forming part of the undistributed profits (including profits or surplus money arising from the appreciation in value of any capital assets of the Company) standing to the credit of the Reserve or Reserve Fund or any other Fund of the Company of in the hands of the Company and available for dividend or representing premium received on the issue of shares and standing to the credit of the share premium account be capitalized by issue and distribution as fully paid up shares, debentures, debenture stocks, bonds or other obligations of the Company. Such issue and distribution shall be made to, among and in favor of members entitled thereto and in accordance with their respective rights and interest in the share capital.
- Capitalisation

THE SEAL

140. The Board shall provide for the safe custody of the seal and subject to the provisions hereinafter contained of the signature of certificate of title to shares to the Company, the seal shall never be used except by the authority previously given by the one (1) Director at least shall sign every instrument to which the seal is affixed and every such instrument shall be countersigned by the Managing Director or other person (if any) appointed by the Board, provided, nevertheless, that any instrument bearing the seal of the Company and issued for valuable consideration shall be binding on the Company notwithstanding any irregularity of the Directors issuing the same.
- The seal its custody and use
141. The Company may, for its use outside Bangladesh have an official seal which shall be a facsimile of the common seal of the Company with the addition on its face of the name of the territory or place where it is to be used.
- Seal abroad

ACCOUNTS

142. The Board shall cause true accounts to be kept of: Accounts
- 142.1 all sums of money received and expended by the Company and the matters in respect of which such receipt and expenditure take place;
- 142.2 all banking business carried on by the Company; and
- 142.3 the assets, and liabilities of the Company and generally of all its commercial, financial and other affairs, transactions and engagements and of all other matters necessary for showing the true financial state and condition of the Company and the accounts shall be kept in English/Bangla in such manner as the Board may deem fit and the books of accounts shall be kept at the office or such other place or places as the Board think fit and shall be open to inspection by the Directors during normal business hours.
143. The Board shall from time to time determine whether and to what extent and at what time and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being Directors and no number, not being Director, shall have any right of inspecting any accounts or books or documents of the Company except as conferred by law or authorised by the Directors or by the Company in General Meeting. Inspection by members of accounts and books of the company
144. Once at least in every calendar year the Board shall lay before the Company in General Meeting a profit and loss account for the period since the preceding account, or in case of a first account, since the incorporation of the Company and a Balance Sheet containing a summary of the property and liabilities of the Company made up to a date not more than Nine (09) months before the meeting and every such Balance Sheet be accompanied by a report to be attached thereto of the Board as to the state and condition of the Company and as to the amount, if any, which they recommended to be paid out of the profits by way of dividend and the amount if any, set a side by them for the Reserve Fund, General Reserve or Reserve Account shown specifically in the Balance Sheet or to be shown specifically in a subsequent Balance Sheet. Statement of accounts and reports to be furnished to General Meeting Balance Sheet to be served on every member
145. The profit and loss account shall include particulars showing the total of the amount paid, whether as fees, percentages of profit or otherwise, to the Directors as remuneration for their services and the total of the amount written off for depreciation. If any Director of the Company is by virtue of the nomination (whether direct or indirect) of the Company, a Director of any other company, any remuneration or the emolument received by him for his own use Particulars of profit and loss account

whether as a Director or otherwise in connection with the management of the other company shall be shown in a note at the foot of the account or in a statement attached thereto.

146. The Balance Sheet and the profit and loss account shall be signed by two (2) Directors and by the Managing Director or other person appointed by the Board and the Auditor's Report shall be attached to the Balance Sheet and profit and loss account or there shall be inserted at the foot of the Balance Sheet and the profit and loss account as reference to such report. A copy of such Balance Sheet and the profit and loss account so audited together with a copy of the Auditor's Report shall at least fourteen (14) days before the meeting at which the same are to be laid before the members of the Company, be sent to every member of the Company and every debenture holder of those address the Company is aware and a copy of the same shall be deposited at the office for inspection by the members of the Company during a period of at least fourteen (14) days before that meeting.
147. After the Balance Sheet and the profit and loss account have been laid before the Company in General Meeting, three (3) copies thereof signed by the Managing Director or other person appointed by the Board shall be filed with the Registrar of Companies together with the annual list of members and summary prepared in accordance with the requirement of Section 36 of the Act.

Balance Sheet and other documents to be sent to every member

Copies of Balance Sheet and profit and loss account shall be filed with the Registrar

AUDIT

148. Once at least in every year, the accounts of the Company shall be examined and audited and the correctness of the profit and loss account and Balance Sheet ascertained by one or more auditor or auditors.
149. The Company at each Ordinary General Meeting shall appoint an Auditor or Auditors with the approval of Bangladesh Bank being a Chartered Accountant or Accountants to hold office until the next Ordinary General Meeting and the following provisions shall have effect that is to say;
- 149.1 if an appointment of an Auditor or Auditors is not made at an Ordinary General Meeting, the Board of Directors shall appoint and Auditor of the Company for the current year and fix the remuneration to be paid to him by the Company for his services;
- 149.2 the Board may fill up any casual vacancy that may occur in the office of Auditor by the appointment of a person being a Chartered Accountant who shall hold such office until the next Ordinary General Meeting, but while any such vacancy continues, the surviving or continuing Auditors, if any, may act;

Accounts to be audited

Appointment and qualification of auditors

- 149.3 a Director or Officer of the Company, or a partner of or person in the employment of such Director or Officer or any person indebted to the Company shall not be appointed Auditor of the Company;
- 149.4 if any person after being appointed Auditor becomes indebted to the Company, his appointment shall thereupon be terminated;
- 149.5 the first Auditor of the Company may be appointed by the Board before the Statutory Meeting and, if so appointed, shall hold office until the first Ordinary General Meeting unless previously removed by a resolution of the shareholders in General Meeting in which case the shareholders of such Meeting may appoint Auditors;
- 149.6 a retiring Auditor shall be eligible for reappointment if permissible;
- 149.7 no person other than a retiring Auditor shall be capable of being appointed in the office of Auditor at an Ordinary General Meeting unless notice of any intention to nominate him be given to the Company not less than fourteen (14) days before the day appointed for the holding of such Ordinary General Meeting and in respect of such notice the provisions of Section 210(6) of the Act shall be complied with.
150. The remuneration of the Auditors of the Company shall be fixed by the Company in General Meeting except that the remuneration of any auditors appointed before the Statutory Meeting or to fill any casual vacancy may be fixed by the Board. Remuneration of Auditors
151. The Auditors of the Company shall be entitled to receive notice of and to attend any General Meeting of the Company at which any account which has been examined or reported by them is to be laid before the Company and may make any statements or explanation they desire with respect to the accounts. Auditors entitlement to notice and General Meeting
152. Every account when audited and approved by a General Meeting shall be conclusive except as regards any error discovered therein within three (3) months after the approval thereof. Wherever any error is discovered within that period the account shall forthwith be corrected and henceforth shall be conclusive. Accounts when audited and approved to be conclusive except as to errors discovered within three months

NOTICE

- 153.1 A Notice (which expression shall be deemed to include and shall include any summons, notice, process, order, judgement or any other document in relation to or in the winding up of the Company) may be given by the Company to any member either personally or by sending it by post (airmail where appropriate) to him at his last address registered with the Company.
- 153.2 Where Notice is sent by post, the service of such Notice shall be deemed to be effected by properly addressing, prepayment and posting a letter containing the Notice and, unless the contrary is proved, to have been effected at the time at which the letter would have been delivered in the ordinary course of post.
154. If a member has no registered address and has not supplied to the Company an address for the giving of Notice to him a Notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the office shall be deemed to be duly served upon him on the day on which the advertisement appears. Notice on members having no registered address
155. A Notice may be given by the Company to the joint holders of a share by giving the same to the joint holder named first in the Register of Members in respect of the share. Notice to joint holders
156. Notice of every General Meeting shall be given in such manner hereinbefore authorised to;
- 156.1 every member of the Company, including bearers of share warrants except those members who have not supplied to the Company an address for the giving of Notice to them;
- 156.2 every person entitled to a share in consequence of the death or insolvency of a member who but for his death or insolvency would be entitled to receive Notice of the meeting.
157. Any Notice to be given by the Company shall be signed by the Secretary or such Officer as the Board may appoint. Such signature may be written, printed or lithographed. Notice by Company and signature thereto
158. Every person who by operation of law, by way of transfer or by other means whatsoever, shall become entitled to any share, shall be bound by every Notice in respect of such share which previous to his name and address and title to the share being notified to the Company shall have been duly given to the person from whom he derives his title to such share. Transferee etc. bound by proof of Notice

WINDING UP

159. Subject to the provisions of these presents if the Company shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid Distribution of assets

up capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the share held by them respectively. And if in a winding up, the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess shall be distributed amongst the members in proportion to the shares held by them respectively. But this Article is to be without prejudice to the rights of the holders of shares upon special terms and conditions.

160. If the Company shall be wound up (whether voluntarily or otherwise), the liquidators may, with the sanction of and Extraordinary Resolution, divide amongst the contributors in specie or kind any part of the assets of the Company and may, with the like sanction, vest any part of the assets of the Company on trustees upon such trusts for the benefit of the contributories or any of them as the liquidators with the like sanction shall think fit.
- Distribution in
specie or kind

SECRECY CLAUSE

161. No member shall be entitled to require discovery of or any information respecting any detail of the Company's trading or any matter which may be in the nature of a trade secret, mystery of trade or secret process which may relate to the conduct of the business of the Company and which in the opinion of the Board it would be inexpedient in the interest of the Members of the Company to communicate to the public.
- Secrecy clause
162. The Company shall keep secret and confidential all transactions with its clients.
- Secrecy of
clients
transaction
163. Every Director, Manager, Auditor, Trustee, Member of a Committee, officer, servant, agent, or other persons employed in the business of the company shall, if so required by the Board of Directors, before entering upon his duties, sign a declaration pledging himself to observe strict secrecy respecting all transactions of the company with its customers and the state of accounts with individuals and in the matter relating thereto and shall by such declaration pledge himself not to reveal any of the matters which may come to his knowledge in the discharge of his duties except when required so to do by the Board of Directors or any meeting or by a court of law and except so far as may be necessary in order to comply with any of the provisions of this present contained.

INDEMNITY AND RESPONSIBILITY

164. Subject to the provisions of Section 102 of the Act, every Director of the Company, including the Chairman, Managing Director or Officer (whether Manager, Secretary or other Officer) or employee of the Company shall be indemnified by the Company against and it shall be the duty of the Directors out of the funds of the Company to pay all cost, losses and expenses, including travelling and living expenses which the Chairman, Managing Director, Director, Officer or employee aforesaid may incur or become liable for by reason of any contract entered into or act or deed done by him in such capacity or in any way in the proper discharge of his duties. Directors and others right to indemnity
165. Subject as aforesaid every Director, including the Chairman, Managing Director or Officer of the Company shall be indemnified against any liability incurred by him in defending any proceeding (whether civil or criminal) in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 396 of the Act in which relief is given to him by the court.

AMENDMENT OF ARTICLES

166. The Articles of Association of the Company cannot be changed without the prior permission of the Bangladesh Bank.

We, the undersigned persons whose names and addresses are given below are desirous of being formed into a Public Limited Company in pursuance of this Articles of Association and we respectively are agreeable to take the number of Shares in the capital of the Company set opposite to our respective names.

Sl No	Name, Address, nationality and description of subscribers	Number of Shares taken by each Subscriber	Signature of Subscribers	Name and Addresses of witness
		Sd/-	

Total

Dated.....

Sample of Company Limited by Guarantee

The formats of companies under section 28, 29 and the Societies Registration Act are almost same except few basic things.

CHAPTER 19

Company Matter

Companies Act, 1994 and Companies Rules, 2009 are the governing legislations in company matters. For any alteration in the object clause of the memorandum, rectification of share register, reduction of share capital, condoning delay in submission of return/ audit report/ holding Annual General Meeting / minutes of statutory report/ balance sheet/ registering the charge documents, amalgamation or merging of companies, protection of minority interest, winding up and also some other matters are the popular company matters. These are filed before the High Court Division. Section 3 of the Companies Act provides jurisdiction in company matter in the following language—

“(১) এই আইনের অধীন এখতিয়ারসম্পন্ন আদালত হইবে হাইকোর্ট বিভাগ :

তবে শর্ত থাকে যে সরকার, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা এবং তৎকর্তৃক নির্ধারিত বাধা-নিষেধ ও শর্তাবলী সাপেক্ষে, এই আইনের অধীনে হাইকোর্ট বিভাগে অর্পিত সমুদয় বা যে কোন ক্ষমতা কোন জেলা আদালতকে অর্পণ করিতে পারিবে; এবং সেইক্ষেত্রে উক্ত জেলা আদালত, সংশ্লিষ্ট জেলায় যে সকল কোম্পানীর নিবন্ধিত কার্যালয় রহিয়াছে সেই সকল কোম্পানীর ক্ষেত্রে, এখতিয়ারসম্পন্ন আদালত হইবে।

ব্যাখ্যা : কোন কোম্পানী অবলুপ্তির (winding up) ব্যাপারে জেলা আদালতের এখতিয়ার নির্ধারণের উদ্দেশ্যে, “নিবন্ধিত কার্যালয়” বলিতে কোম্পানীর অবলুপ্তির জন্য দরখাস্ত পেশ করার অব্যবহিত ছয় মাস পূর্বে যে স্থানে উক্ত কোম্পানীর নিবন্ধিত কার্যালয় ছিল সেই স্থানকে বুঝাইবে।

(২) কেবল যথোপযুক্ত আদালতে কোন কার্যধারা রুজু না হওয়ার কারণে উক্ত কার্যধারাকে এই ধারার কোন কিছুই অবৈধ প্রতিপন্ন করিবে না।“

In all company matters, it is better to add the Registrar of the Register of Joint Companies and Firms (RJSC) as a party, because RJSC carries out the role recording and registering the relevant documents of the company including Incorporation Certificate, Articles of Association, Memorandum of Association, Form XII, Schedule X, Form 117, Audit Report, Notice and Minutes of Annual General Meeting and other documents as necessary to submit to the office of RJSC. Currently, company matters can only be filed before the High Court Division. Anyone authorized on behalf of the company and having the power to represent can file and swear affidavit in company matter – details of which have already been discussed in first chapter where ‘about the parties’ is explained and in another chapter which is on incorporation of the companies. However Rule 18 of the Companies Rules, 2009 states that “where an application is made on behalf of a company the verification of the application or the affidavit as the case may be shall be affirmed by a director or some other principal officer of the company. The Judge before whom the application is made may for special reasons, grant leave for the verification to be made by any person other than a director or other principal officer of the Company.”

Different formats of company matters are provided under the Companies Rules, 2009. Under Rule 9 different types of company matters are listed. It states that “in all courts having

jurisdiction under this Act shall be kept and maintained a book called “the Register of Company Matter” in which shall be entered and numbered serially all applications made under sections 13, 15, 41, 43, 59, 71, 81, 82, 85, 89, 115, 151, 153, 171, 175, 176, 193, 203, 228, 229, 230, 231, 233, 245, 248, 251, 253, 255, 258, 259, 261, 262, 263, 264, 265, 293, 294, 296, 299, 300, 301, 302, 303, 305, 309, 311, 312, 314, 316, 326, 328, 331, 333, 338, 339, 340, 342, 346, 349, 395, 396 and any other original proceeding under the Act in relation to a company”. The Court shall have inherent jurisdiction while deciding a matter under the Companies Act to pass any order or to follow any procedure including any of the provisions of the Code of Civil Procedure or the Original Side Rules framed under the erstwhile Letters Patent for ends of justice and to prevent abuse of the process of the Court.¹

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

COMPANY MATTER NO. _____ OF 2019.

IN THE MATTER OF:

An application under section 13 read with sections 12 and 14 of the Companies Act, 1994 for confirmation of the alteration in the object clauses of the Memorandum of Association by this Hon’ble Court.

AND

IN THE MATTER OF:

Natural Pharmaceuticals Limited, a public limited company, of 17 Dhanmondi, Road No. 2, Dhaka-1205.

.....Petitioner.

-Versus-

The Registrar of Joint Stock Companies and Firms (RJSC), TCB Bhaban (6th Floor), 1 Kawran Bazar, Dhaka- 1215, represented by its Registrar.

.....Respondent.

1. Rule 8, the Companies Rules, 2009.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justice of the said Hon'ble Court.

The humble petition of the petitioner most respectfully—

S H E W T H :

1. That this application has been filed by the petitioner for confirmation of the alteration in the Object Clauses of the Memorandum of Association of the Petitioner Company from this Hon'ble Court. The respondent is the Registrar of Joint Stock Companies and Firms (RJSC). The addresses as mentioned in the cause title are correct for the purpose of services notices, summons, etc.
2. That it is stated that the petitioner is a public limited company limited by shares, duly registered with the RJSC under the Companies Act, 1913 on 17.03.1976 having its incorporation Certificate being No. C-4744/162 of 1975-1976. Photocopies of the incorporation certificate along with Memorandum of Association (MOA) and Articles of Association (AOA) of the Company are annexed hereto and marked as Annexure- "A" Series.
3. That it is stated that the petitioner is a leading manufacturer and exporter of medicines in Bangladesh. It started its operation by importing products from Bayer, Germany and Upjohn, USA and selling them in the local market in 1980. From that humble beginning, it has grown from strength to strength, and today it has become an emerging global generic drug company from the region. It's manufacturing facilities have been accredited by the leading global regulatory authorities. The Medicines manufactured by the petitioner company are now being exported to more than 50 countries including the highly regulated markets of USA, UK, Europe, Canada and Australia. The company has won the National Export (Gold) trophy a record 5 times and remains the only company in the country to win the highly prestigious SCRIP Award as the Best Pharma Company in an Emerging Market. It also has the unique distinction as the only Bangladeshi Company to get listed on the AIM of London Stock Exchange. In Bangladesh, it is listed with both Dhaka and Chittagong Stock Exchanges. It also has a majority stake in Nuvista Pharma (formerly Organon Bangladesh), a leading hormone and steroid manufacturer in the country. It currently employs more than 4000 employees including doctors, pharmacists, engineers, chemists, accountants, business graduates and other white collar professionals. It is consistently building upon its portfolio and currently producing more than 500 products encompassing broad therapeutic categories and it has created strong differentiation by offering a range of high-tech, specialized products which are difficult to imitate.
4. That it is stated that the petitioner is committed to enhancing human health and well being by providing contemporary and affordable medicines, manufactured in full compliance with global quality standards. It continually strives to improve its core capabilities to address the unmet medical needs of the patients and to deliver outstanding results for its shareholders. Its vision is to be one of the most trusted, admired and successful

pharmaceutical companies in the region with a focus on strengthening research and development capabilities, creating partnerships and building presence across the globe.

5. The petitioner was incorporated in the year 1976. By this time the petitioner has expanded its business, both in the country and abroad. With the growing success, it becomes necessary for the petitioner to amend its object clause of the MOA so as to include useful clauses in the MOA for making the company commercially and financially viable, profitable, going concern and to meet with the situations according to time. For that reason, the shareholders and directors of the petitioner company held an Extra-Ordinary General Meeting (EGM) on 22.12.2018 vides notice dated 29.11.2018. The resolution was passed unanimously wherein the special resolutions under serial Nos. 1 and 2 as stated thereof were resolved. By the said special resolution the Sub-Clause 1, 2, 16, 17, 30, 30A of Clause III along with Clause V in the Memorandum are to be added/altered/amended in the MOA of the petitioner company. Copies of notice dated 29.11.2018 and Minutes of EGM dated 22.12.2018 are annexed hereto and marked as Annexure- “B” and “B-1”.
6. That the aforesaid resolutions were taken unanimously. The proposed clauses are highly necessary for the smooth running, functioning and managing the overall business, affairs and financial mobility of the petitioner company. By the proposed Clauses the existing Sub-Clause Nos. 1, 2, 16, 17 and 30 of Clause III regarding Object Clause of the MOA will be substituted and Sub-Clause 30A will be added thereon and the existing Clause V of the MOA will also be substituted which is regarding enhancement of share capital of the petitioner company. For ready reference, the special resolution Nos. 1 and 2 are quoted below—

“1. To alter the Objects Clause in the Memorandum of Association of the Company :

“RESOLVED that pursuant to the provisions of Section 12 of the Companies Act, 1994 and other applicable provisions, if any, and subject to the confirmation of the Hon’ble High Court Division of the Supreme Court of Bangladesh, Clause III (Objects Clause) of the Memorandum of Association of the Company, be and is hereby altered by the following by addition, deletion and substitution as follows” :

Sub-clauses of Clause III	Previous Sub-clause	Amended Sub-Clause
Sub-clause 1 of Clause III	To manufacture drugs and medicines, allopathic and indigenous in general and particularly produce and prepare biological and non-biological drugs, injectable of all kinds, tablets of all sorts, serum, vaccines, tinctures, extracts, lotions, syrups both medicated non-medicated, other chemical products, chemical food, other food products including milk food, barley, arrowroot	To manufacture drugs and medicines, allopathic and indigenous in general and particularly produce and prepare biological and non-biological drugs of every description and application, other chemical products, chemical food, other food products and to carry on the research and development activities for innovation and improvement in relation to product, process, technology and to

Sub-clauses of Clause III	Previous Sub-clause	Amended Sub-Clause
	etc. and to set up pharmaceutical laboratory, workshop, research institute and necessary structures and organizations and to work as pharmaceutical and chemical manufacturers generally.	establish, maintain and operate laboratories, workshops, institutes and other necessary infrastructures and organizations for the purpose of carrying on chemical, physical and other research in medicine, chemistry, industry or other related or unrelated fields for own use or for the use of others and to work as pharmaceutical and chemical manufacturers generally.
Sub-clause 2 of Clause III	To carry on the business of manufacturers and dealers of both wholesale and retail, in pharmaceutical, medicinal, chemical, industrial and other preparations and articles, compounds, oils, paints, pigments and varnishes, drugs, dyeware, paint and colourgrinders, makers of and dealers in proprietary articles of all kinds, and of electrical, chemical, photographic and scientific apparatus and materials.	To carry on the business of manufacturers, distributors and dealers of both wholesale and retail, in pharmaceutical, medicinal, chemical, industrial and other preparations and articles, compounds, oils, paints, pigments and varnishes, drugs, dyeware, paint and colourgrinders, makers of and dealers in proprietary articles of all kinds, and of electrical, chemical, photographic and scientific apparatus and materials.
Sub-clause 16 of Clause III	To apply for, purchase, or otherwise acquire and register any patents or patent rights, licences, concessions, secret processes, or privileges, trade marks or designs and the like conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the Company or the acquisition of which may seem calculated directly or indirectly to benefit the Company, and to use, exercise, develop or grant licences in respect of or otherwise turn to account the property rights or information so acquired.	To apply for, purchase, or otherwise acquire and register any patents or patent rights, brevets d'invention, licences, concessions, secret processes, or privileges, trademarks or designs, marketing rights, Abbreviated New Drug Applications (ANDAs), dossiers, know-how and other forms of intellectual property rights, and further to confer any exclusive or non-exclusive or limited or contingent right to use, own, transfer, sell any of the above or any secret or other information as to any invention or process of the Company, which may seem calculated directly or indirectly to benefit the Company.

Sub-clauses of Clause III	Previous Sub-clause	Amended Sub-Clause
Sub-clause 17 of Clause III	To enter into partnership or into any arrangement for sharing profits, union of interest, cooperation, joint venture, reciprocal concession, or otherwise, with any person or persons or Company carrying on or engaged in, or about to carry on or engaged in any business or transaction which the Company is authorised to carry on or engage in or in any business or transaction capable of being conducted so as directly or indirectly to benefit this Company, and to acquire or join in acquiring any such business.	To enter into partnership or into any arrangement for sharing profits, union of interest, cooperation, joint venture, reciprocal concession, or otherwise, with any person or persons or company carrying on or engaged in, or about to carry on or engaged in any business or transaction which the Company is authorized to carry on or engage in or in any business or transaction capable of being conducted so as directly or indirectly to benefit this Company, and to acquire or join in acquiring the whole or any part of any undertaking, business, property and liabilities of any person or persons or company in possession of any asset or carrying on any business which the Company is authorised to carryon so as to benefit the Company directly or indirectly.
Sub-clause 30 of Clause III	To borrow or raise loan and money from any Bank and/or other financial institutions (including Bangladesh ShilpaRinSangstha) in such manner as the Company shall think fit, with or without securities or by any other means as may be deemed expedient, and secure the repayment thereof by mortgaging, hypothecating, pledging or otherwise charging the whole or any part of the property or assets of the Company, both moveable and immovable, and also to raise loan by issue of debentures or debenture stocks, perpetual or otherwise, charged on all or any of the Company's properties, including its uncalled capital and/or by any other legal means.	To borrow or raise loan and money from any Bank and/or other financial institutions in such manner as the Company shall think fit, with or without securities or by any other means as may be deemed expedient, and secure the repayment thereof by mortgaging, hypothecating, pledging or otherwise charging the whole or any part of the property or assets of the Company, both moveable and immovable, and also to raise loan by issue of debentures or debenture stocks, perpetual or otherwise, charged on all or any of the Company's properties, including its uncalled capital and/or by any other legal means.

Sub-clauses of Clause III	Previous Sub-clause	Amended Sub-Clause
Addition of new Sub-clause 30A after Sub-clause 30 of Clause III	_____	To provide guarantee, surety, pledge or any other form of security in connection with any loans or credit facilities availed or to be availed by the Company, its joint ventures, subsidiaries, affiliates, associates or any other third party having business relationship with the Company and further to provide guarantee, surety, pledge or any other form of security to secure performance obligations of the Company, joint ventures, subsidiaries, affiliates, associates or any other third party having business relationship with the Company.

2. To increase the authorised share capital divided into ordinary shares and preference shares in Clause V of the Memorandum of Association of the Company

“RESOLVED that pursuant to the provisions of the Companies Act, 1994 and other applicable provisions, if any, Clause V of the Memorandum of Association of the Company, be and is hereby altered by the following by addition, deletion and substitution as follows”:

Clause	Previous Clause	Amended Clause
Clause V	The authorised share capital of the Company is Tk.910,00,00/- (Taka), consisting of 50,00,00 Ordinary Shares of Tk.10/- each amounting to Tk.500,00,00/- (Taka); and 4,10,00 Preference Shares of Tk.100/- each amounting to Tk.410,00,00/- (Taka) with power to increase and reduce the capital and to divide the shares in the capital for the time being into several classes and to attach thereto respectively any preferential, deferred, qualified, or special rights, privileges or conditions as may be determined upon by or in accordance with the regulations of the Company, and to modify or abrogate any such rights, privileges or conditions in such manner as may for the time being be provided by the regulations of the Company.	The authorized share capital of the Company is Tk. 1500,00,00/- (Taka), consisting of 100,00,00 (.....) Ordinary Shares of Tk. 10/- (Taka ten) each amounting to Tk. 1000,00,00/- (Taka); and of 5,00,00 (.....) Preference Shares of Tk. 100/- (Taka one hundred) each amounting to Tk. 500,00,00/- (Taka.....) with power to increase and reduce the capital and to divide the shares in the capital for the time being into several classes and to attach thereto respectively any preferential, deferred, qualified, or special rights, privileges or conditions as may be determined upon by or in accordance with the regulations of the Company, and to modify or abrogate any such right, privileges or conditions in such manner as may for the time being be provided by the regulations of the Company.

7. That it is stated that the aforesaid proposed clauses are neither contradictory / conflicting with the existing clauses / provisions of the MOA and AOA of the Company nor with the existing laws and regulations.
8. That it is humbly submitted that the aforesaid changes/alterations made in the said Object Clause in the MOA of the petitioner company is essential for expansion of its business, for smooth carrying out the functions and affairs of the company, for obtaining debt finance by creating mortgage or other charges, and for entering into any joint venture project for making the company more financially viable, and also for keeping strong financial co-operation with other companies and financial institutions. And the same as being ancillary and incidental for attainment of its main object, the addition of said object clause is highly required. Further to enable the petitioner company to carry on its business more financially, more efficiently and also to attain its main purposes by new or improved means. As such, this application may kindly be allowed by this Hon'ble Court for ends of justice.
9. That it is submitted that under the aforesaid circumstances, the proposed amendments/alterations are highly necessary to carry on the business of the petitioner company more economically or more efficiently, and to attain its main purpose by new or improved means. Thereafter, the petitioner company by special resolution in EGM dated 22.12.2018 with the unanimous votes of all the present members has decided to alter the provisions of its memorandum by way of substitution of Sub-Clauses 1, 2, 16, 17 and 30 and addition of Sub-Clause 30A under Clause III in the Object Clause and by way of substitution of Clause V of the Memorandum of Association of the Company in the form and manner as stated in the Resolution Nos. 1 and 2 of said EGM (Annexure- "B-1"). As such, this application may kindly be allowed by this Hon'ble Court for ends of justice.
10. That the petitioner craves leave of the Hon'ble Court to file this petition with the photocopies of Annexures as the original are lying with the petitioner and may be produced as per the direction of this Hon'ble Court. The petitioner company in the said EGM has authorised its company Secretary Mohammad Asad Ullah to swear affidavit, sign deponent and to carry out necessary procedures. The petitioner humbly seeks permission to swear affidavit with the kind leave of this Hon'ble Court.

Wherefore, it is most humbly prayed that Your Lordships would be graciously pleased to:

- A) Admit this application and pass necessary orders/directions for publication of the notices;
- B) Confirm the alternation by way of substitution of Sub-Clauses 1, 2, 16, 17 and 30 and addition of Sub-Clause 30A under Clause III in the Object Clause and by way of substitution of Clause V of the Memorandum of Association of the Company in the form and manner as stated in the Resolution

Nos. 1 and 2 of Minutes of the Extra-Ordinary General Meeting of the Company dated 22.12.2018 held vide Notice dated 29.11.2018 (Annexure- “B-1” & “B” respectively);

- C) Pass such other or further or orders as your Lordship may deem fit and proper in this case.

And for this act of kindness, the petitioner as in duty bound, shall ever pray.

AFFIDAVIT

I, Aman Ullah, son of late Abad Ullah and Sultana Begum, of House/Holding/Flat No. 103, House No. 78, Road 8/A, Dhanmondi R/A, Dhaka-1209, Date of Birth: 14.05.1970, by Faith-Muslim, by profession- Service, a Bangladesh national having National Id No. 2699849111463, do hereby solemnly affirm and say as follows:—

01. That I am the Company Secretary of the Petitioner Company and I am acquainted with the facts and circumstance of the case and as such I am competent to swear the Affidavit.
02. That the statement of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon’ble Court.

Prepared in my office.

(Shahadat Hossain)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shahadat Hossain)
Advocate
Membership # 6731
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

COMPANY MATTER NO. _____ OF 2018.

IN THE MATTER OF:

An application under section 159 read with section 171
of the Companies Act, 1994.

ANDIN THE MATTER OF:

KM Jute Fibres Ltd, a private limited company, of 49/1,
Imamgonj, Dhaka, represented by its Managing Director
Md. Sarwar Hossain.

.....Petitioner.

-Versus-

1. The Registrar of Joint Stock Companies and Firms
(RJSC), TCB Bhaban (6th Floor), 1 Kawran Bazar,
Dhaka- 1215, represented by its Registrar.

.....Respondent.

2. IPDC Finance Limited, of Hosna Centre (4th
Floor), 106, Gulshan Avenue, Dhaka-1212,
represented by its Managing Director.
3. Reliance Jute Mills Limited, of 49/1, Imamgonj,
Dhaka, represented by its Managing Director.

.....Proforma-Respondents.

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion
Justice of the said Hon'ble Court.

The humble petition of the petitioner most
respectfully—

S H E W T H:

1. That the petitioner is a private limited company incorporated under the laws of Bangladesh.
2. That the respondent No. 1 is the The Registrar of Joint Stock Companies and Firms (RJSC), TCB Bhaban (6th Floor), 1 Kawran Bazar, Dhaka- 1215, represented by its Registrar.
3. That the petitioner is a private limited company. The petitioner and the pro-forma respondent No. 3 belong to a same group of company. Photocopies of MOA & AOA of these two companies are annexed hereto and marked as Annexure- “A Series”.
4. That on 13.08.2018 the pro-forma respondent No. 3 obtained loan from the pro-forma respondent No. 2. Photocopy of the sanction advice dated 13.08.2018 is annexed hereto and marked as Annexure- “B”.
5. That against the said loan, 2 (two) properties, one belonging to the pro-forma respondent No. 3 and other belonging to the petitioner have been mortgaged. The property measuring 35.81 decimals described in the Schedule II of the said sanction advice dated 13.08.2018 belongs to the pro-forma respondent No. 3, and the property measuring 23 decimals described in Schedule I of said sanction advice dated 13.08.2018 belongs to the petitioner company. Against the loan, the pro-forma respondent No. 3 executed Registered Mortgage Deed being No. 8993 dated 5.09.2018 and Registered Irrevocable General Power of Attorney Deed being No. 8994 dated 5.09.2018 whereupon the property measuring 35.81 decimals belonging to the pro-forma respondent No. 3 is mentioned under “Schedule 1” and the property measuring 23 decimals belonging to the petitioner No. 2 is mentioned under “Schedule 2”. Photocopies of mortgage deed and irrevocable general power of attorney (IGPA) are annexed hereto and marked as Annexure- “C Series”.
6. That the aforesaid mortgage properties being the properties belonging to the private limited companies are required to place on charge i.e. mortgage deed to be registered under section 159 of the Companies Act with the office & RJSC. Accordingly charge was created over the said mortgage property but inadvertently it was only made over the property measuring 35.81 decimals belonging to the pro-forma respondent No. 3 while inadvertently it got missed to create charge over 23 decimals land belonging to the petitioner which is mentioned under Schedule 1 of said Registered Mortgage Deed No. 8993 dated 5.09.2018 and Registered IGPA Deed No. 8994 dated 5.09.2018. Photocopy of the charge document is annexed hereto and marked as Annexure- “D”.
7. That under the circumstances, the pro-forma respondent No. 2 informed the petitioner to register to the mortgage deed i.e. to create charge over the said property as mentioned in Schedule 2 of said mortgage deed and IGPA. Copy of the requirement of the proforma respondent No. 2 is annexed hereto and marked as Annexure – “E”.
8. That it was purely inadvertent mistake of the parties not to register the mortgage deed i.e. to create charge over the Schedule 2 of said Registered Mortgage Deed and IGPA. Description of which is given below—

Registered Mortgage Deed No. 8993 dated 5.09.2018

&

Registered IGPA Deed No. 8994 dated 5.09.2018

Schedule 2

All that piece and parcel of land measuring 23 (Twenty Three) Decimal, along with all structure constructed/to be constructed thereon, situated within District: Dhaka, Police Station & Sub-Registry Office: Keranigonj, J.L. No. : C.S. & S.A. 411, R.S. 65, Mouza: Shonakanda, Kantian No. R.S. 836, corresponding to Dag No. : S.A. 314, R.S. 662, Mutation Khatian No. 836/kat, Jot No. 6820, being butted & bounded by:

To the North : Road;

To the South : Sarwar & others;

To the East : Ali Hossain Bhuiyan;

To the West : Sarwar & others;

(Henceforth referred to as 'the said property')

9. That since the aforesaid property has already been placed as a collateral security by executing registered mortgage deed and IGPA, therefore its becomes necessary to create charge over the property and to get the mortgage deed registered with the RJSC otherwise the proforma respondent No. 2 may suffer irreparable loss and injury in future.
10. That the delay or missing out of creation charge over the said property is completely unintentional and bonafide. As such, the time for registration of mortgage under section 159 of the Companies Act with RJSC may kindly be extended by condoning delay for ends of justice.
11. That the petitioner craves leaves of the Hon'ble Court to file this petition with the photocopies of Annexures as the original are lying with the petitioner and may be produced as per the direction of this Hon'ble Court.

Wherefore, it is prayed that your Lordship would be graciously pleased :

- (i) To admit this application and notify the respondent No. 1,
- (ii) To publish necessary notices,
- (iii) To condone the delay of days in filing the registered deed of mortgage and IGPA (Annexure- 'C Series') by the petitioner with the Registrar of

Joint Stock Companies and Firms and registration of the said deed of mortgage on such terms and conditions as this Hon'ble Court may deem fit and proper,

- (iv) To pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness, the petitioner as in duty bound, shall ever pray.

AFFIDAVIT

I, Md. Sarwar Hossain, son of late Awlad Hossain and Peyara Khatun, Managing Director of Keranigonj Jute Fibers Ltd, a private limited company, of 49/1, Imamgonj, Dhaka, permanent address: Village- Char Ragunathpur, Char Ragunathpur, Post Office- Keranigonj, Keranigonj, Dhaka, age about- 20 Jun 1952, by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No. 2613894301264 do hereby solemnly affirm as follows:—

1. That I am the Managing Director of the petitioner Company and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.
2. That the statement of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me
the Supreme Court Premises on
this ...th day of, 2018

DEPONENT

The deponent is known to me
and identified by me.

Advocate

Membership No. _____
Hall Room No. 2, Supreme Court
Bar Association, Shahbagh, Dhaka
Mobile: _____

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

COMPANY MATTER NO. _____ OF 2019.

IN THE MATTER OF:

An application under section 228 read with section 229 of the Companies Act, 1994.

ANDIN THE MATTER OF:

RN Knitting Textile Mills Limited, of Silver Tower # 17, House # 52, Gulshan Avenue, Gulshan-1, Dhaka-1212, represented by its Managing Director M.A. Halim (Transferor Company).

.....Petitioner.

-Versus-

1. The Register of Joint Stock Companies & Firms (RJSC), of 1 Kawran Bazar, TCB Bhaban, Dhaka-1000.
2. One Bank Limited, Gulshan Branch, of 97 Gulshan Avenue, Dhaka-1212.
3. One Bank Limited, Corporate Headquarter Branch, of HRC Bhaban, 46 Kawran Bazar C/A, Dhaka.
3. IFIC Bank Limited, Principal Branch, of IFIC Tower, Level-2, 61, Purana Paltan, Dhaka-1000.
4. Mercantile Bank Limited, Gulshan Branch, of Hosna Center, 106, Gulshan Avenue, Dhaka-1212.

.....Respondents.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition of the petitioner most respectfully—

S H E W T H:

1. That this an application under section 228 and 228 of the Companies Act, 1994 for reconstruction of the petitioner company by way of demerging into 2 (two) other companies.
2. That the respondent No. 1 is the Registrar of Joint Stock Companies & Firms, (RJSC) which is entrusted with the responsibility of registration of different companies and firms. The other respondents are the banks with whom the petitioner company is currently having transaction. The addresses as mentioned in the cause title of this petition are correct address for the purpose of serving notices etc upon the parties.
3. That the petitioner RN Knitting Textile Mills Limited was incorporated on 12.08.2012 under Certificate of Incorporation No. C-103985/12 (*henceforth referred to as 'the Company/Original Company'*) with the following shareholders-directors—

Sl No.	Name	Position	Number of shares
1.	Mr. M.A. Halim	Managing Director	33,40,000
2.	Shahara Halim	Director	45,000
3.	Mr. Arif Hassan	Deputy Managing Director	45,000
4.	Mr. Zarif Hassan	Director	85,000

At the time of incorporation there were total 9 (nine) objects in the object clause, and there were no Division like Unit – 1 (Garments Division) and Unit – 3 (Weaving, Dyeing and Finishing Division). The same were included by obtaining permission and confirmation from the Hon'ble High Court Division as to alternation in the Memorandum of Association of the Company. The authorized share capital of the Company is Tk. 100,00,00,000/- (One Hundred Crore) only divided into 1,00,00,000 ordinary shares of Tk. 100 each with power to increase or reduce the capital and to divide the shares into different classes and to attached thereto any right, privileges or conditions regarding dividends, repayment, voting or otherwise to consolidate or sub-divide the shares. Photocopies of the incorporation certificate, MOA, AOA, Order of the Hon'ble High Court Division, Schedule X and Form XII are annexed hereto and marked as Annexure "A", A-1", "A-2", "A-3", "A-4" and "A-5".

4. That with the sincere, transparent and tremendous dedication of the management of the Company, it becomes a good concern making reasonable profit, deploying a vast number of employees, obtaining necessary licenses, making assets and other things. In course of business, the company has obtained several licenses and certificates from different authorities in the names of its 2 (two) aforesaid Divisions i.e. (i) Unit – 1 (Garments Division) and (ii) Unit – 3 (Textile Division) (*henceforth referred to as 'the Proposed Companies'*). With time and scope of business, it becomes necessary for the Company to split up of the same into 2 (two) Companies separating and apportioning the assets, licenses, rights and liabilities of these 2 (two) Divisions into 2 (two) separate Companies by

dissolution of the Transferor company without being windup. Therefore, by splitting up into 2 (two) separate Companies, the original Company i.e. RN Knitting Textile Mills Limited will be extinguished by dividing its everything into 2 (two) separate Companies i.e. (i) RN Knitting Textile Mills Limited (Unit – 1, Garments) and (ii) RN Knitting Textile Mills Limited (Unit – 3, Textile). In order to give effect to this scheme of reconstruction, the management of the transferor company has adopted a scheme unanimously passed in an Extra Ordinary General Meeting held on 05.12.2019 vide notice dated 04.11.2019. Photocopies of the notice dated 04.11.2019, minutes dated 05.12.2019 and scheme of reconstruction are annexed hereto and marked as Annexure- “B”, “B-1” and “B-2”.

5. That it is stated that the assets and liabilities of the petitioner company has been distributed in the aforesaid scheme on the basis of the audit report of transferor company made for the financial year 2017-2018 (year ended on 30.06.2018). Photocopy of the audit report is annexed hereto and marked as Annexure- “C”.
6. That the licenses and certificates which will be taken by the proposed RN Knitting Textile Mills Limited (Unit – 1, Garments) have already been elaborated in the scheme. Photocopies of the licenses and certificates of Unit-1 are annexed hereto and marked as Annexure- “D”.
7. That the licenses and certificates which will be taken by the proposed RN Knitting Textile Mills Limited (Unit – 3, Textile) have already been elaborated in the scheme. Photocopies of the licenses and certificates of Unit-1 are annexed hereto and marked as Annexure- “E”.
8. That the bank accounts and loan liabilities of the petitioner transferor company have been clearly divided in the aforesaid scheme. However, for the purpose of ready references the loan accounts of the petitioner company in the name of RN Knitting Textile Mills Limited and RN Knitting Textile Mills Limited (Unit- 3) have been attached hereto for the convenience of proper adjudication. Photocopies of the sanction advices dated 28.08.2019, 2.12.2019, 23.09.2019, 25.06.2019 and 20.10.2019 are annexed hereto and marked as Annexure- “F”, “F-1”, “F-2”, “F-3” and “F-4”.
9. That it is stated that since incorporation the share holding position and directorial condition in the transferor company remained unchanged and there is no dispute from any corner about it. There is no case pending against the transferor company. Moreso, the transferor company is decided to be dissolved by demerging/splitting up into 2 (two) companies only for making the companies more financially viable, developed, more organized and profitable. It's also necessary for bringing more financial transparency, managerial efficacy, convincing the investors, effective administration and more profit. The proposed demerging will not in any way affect the financial or any other liability with any bank or financial institution or any concerned authorities.
10. That it is submitted that “Demerger” can be defined as split or division of a company into more number of companies. The New Oxford Dictionary defines the term “demerger” as “the separation of a larger company into two or more smaller organizations.” A Scheme of demerger is in fact a corporate partition of a company into two or more undertakings, thereby retaining one undertaking with it and by transferring the other undertaking to the resulting company or companies. The term ‘demerger’ has not been defined in the Companies Act, 1994. The concept of ‘demerger’ may, however, be deduced from the expression, “arrangement” include “a reorganization of share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of

different classes or by both those methods”, and also from expressions that “the dissolution of any transferor company but without winding it up”. Companies Act, 1994 does not define ‘demerger’ but covers ‘reconstruction’ and ‘arrangement’. Demerger definitely forms part of the scheme of arrangement or compromise. Therefore, the instant application is very much fitting into the existing provision provided under sections 228 and 229 of the Companies Act, 1994.

11. That on the same date of holding EGM the draft scheme of reconstruction was approved subject to sanction of the Hon’ble High Court Division as the directors-shareholders of the proposed companies are same persons.
12. That it is submitted that no one will be prejudiced if the proposed scheme of reconstruction by way of demerging/splitting up of the petitioner company is sanctioned by this Hon’ble Court; rather, it would improve the effectiveness of the business and give benefits to all concerned with the businesses of both the proposed companies along with the existing company including the employees. However, if the proposed scheme is not allowed by this Hon’ble Court, the company shall suffer irreparable loss and injury which may not be compensated in terms of money.
13. That it is submitted that the special resolutions approving the draft scheme of reconstruction was carried unanimously by the shareholders of the petitioner company at its EGM, and in the light of the facts and circumstances of the present case, it is therefore necessary that a sanction may be given by this Hon’ble Court approving the scheme of reconstruction, as contained in (Annexure- B-2) in pursuant to sections 228 and 229 of the Companies Act, 1994.
14. That the petitioner is submitting the photocopies of the annexure, originals of which are kept in the office records of the petitioner and if necessary, the petitioner is under duty to produce the originals at the time of hearing of this petition. However, the learned Advocate has duly attested the same.
15. That in the premises aforesaid, the petitioner finding no other alternative, begs to file this application under Section 228 read with section 229 of the Companies Act, 1994 for reconstruction.

Wherefore, it is most humbly prayed that Your Lordship would graciously be pleased to pass necessary orders as follows :

- (A) To admit the petition and give necessary directions;
- (B) Direct the petitioner Company to hold the Extra-Ordinary General Meeting of its members for approving/finalizing the draft scheme of reconstruction by way of demerging/splitting up of the Company and for filling the same before this Hon’ble Court within the stipulated time;
- (C) And after the scheme of reconstruction is approved by members of the petitioner Company, the same may be filed before this Hon’ble Court for sanction pursuant to section 228 and 229 of the Companies Act;

- (D) Pass an order to dissolve the petitioner Company by demerging/splitting up into 2 (two) other private limited companies namely RN Knitting Textile Mills Limited (Unit – 1, Garments) and RN Knitting Textile Mills Limited (Unit – 3, Textile); and
- (E) Pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness, the petitioner as in duty bound, shall ever pray.

A F F I D A V I T

I, MA Halim, Managing Director-shareholder of the Company, of the petitioner company, son of Belayet Hossain and Majeda Begum, of Silver Tower, 17th Floor, 52 Gulshan Avenue, Gulshan, Dhaka and House No. 1, Road No. 9, Baridhara, Dhaka, age about- 64, by Faith- Muslim, by occupation- business, a Bangladeshi citizen having National ID No. 0120804199178, do hereby solemnly affirm and say as follows:—

1. That I am the Managing Director of the petitioner Company and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

COMPANY MATTER NO. _____ OF 2018.

IN THE MATTER OF:

An application under section 233 of the Companies Act, 1994.

AND

IN THE MATTER OF:

1. TM Inc., represented by its Nominated Director Mohammad Rashid, a shareholder of Bangladesh Development Finance Company Limited (BDFC), of 32 East 42nd Street, Suit 3100, New York, NY 11168. Present Address: House # 34, Block-C, Aftabuddin Road, Bashundhara R/A, Dhaka.
2. Irfan Ahmed, Nominated Director of TM Inc., a shareholder of Bangladesh Development Finance Company Limited (BDFC), of 122 East 42nd Street, Suit 2189, New York, NY 10168, 1/B. Present Address: Eastern Housing Apartment Siddeshwari, Dhaka-1217.
3. MF Inc., represented by its Nominated Director Abdul Roman Md. Abdur Rahim, a shareholder of Bangladesh Development Finance Company Limited (BDFC), of House # 411, Road # 09, Block # F, Bashundhara R/A, PS: Vatara, Dhaka-1229.
4. M.M. Siraj, Nominated Director of MF Inc., a shareholder of Bangladesh Development Finance Company Limited (BDFC), of House # 04, Road # 18, Sector # 13, Uttara, Dhaka.
5. FC Credit Ltd., represented by its Nominated Director Hasan Ali, a shareholder of Bangladesh Development Finance Company Limited (BDFC), of Unit # 03, 12nd Floor, Kwai Fong Commercial Centre, Hongkong. Present Address: Department of Sociology, University of Chittagong.

6. Limon Dresses Limited, represented by its Nominated Director Md. Omar Sharif, a shareholder of Bangladesh Development Finance Company Limited (BDFC), of Room-5025(A), SCBA Annex Building, Supreme Court, Dhaka.

.....Petitioners.

-Versus-

1. Bangladesh Development Finance Company Limited (BDFC), a public limited company having Registration No. C-33341, Dhaka, address: Police Plaza Concord (Tower-2), Level 8, Plot No. 12, Road No. 145, Gulshan, Dhaka-1212, represented by its Managing Director.
2. Milton Hasan, Chairman, of Bangladesh Development Finance Company Limited (BDFC), address: Police Plaza Concord (Tower-2), Level 8, Plot No. 12, Road No. 145, Gulshan, Dhaka-1212.
3. Mostafa Hoque, Managing Director of Bangladesh Development Finance Company Limited (BDFC), address: Police Plaza Concord (Tower-2), Level 8, Plot No. 12, Road No. 145, Gulshan, Dhaka-1212.
4. KV Ltd, represented by its Nominated Director Rimon Ahmed, of Bangladesh Development Finance Company Limited (BDFC), address: Police Plaza Concord (Tower-2), Level 8, Plot No. 12, Road No. 145, Gulshan, Dhaka-1212.
5. SVe Ltd, represented by its Nominated Director Apel Mahmood, of Bangladesh Development Finance Company Limited (BDFC), address: Police Plaza Concord (Tower-2), Level 8, Plot No. 12, Road No. 145, Gulshan, Dhaka-1212.
6. Pranti Life Insurance Ltd, represented by its Nominated Director Nur Awal, of Bangladesh Development Finance Company Limited (BDFC), address: Police Plaza Concord (Tower-2), Level 8, Plot No. 12, Road No. 145, Gulshan, Dhaka-1212.
7. The Registrar of Joint Stock Companies & Firms (RJSC), 1 TCB Bhaban, Dhaka.
8. Bangladesh Securities and Exchange Commission (BSEC), represented by its Chairman, address: Bangladesh Securities and Exchange Bhaban, E-

6/C, Agargaon, Sher-E-Bangla Nagar
Administrative Area, Dhaka-1207.

9. Dhaka Stock Exchange (DSE), represented by its Managing Director, address: Stock Exchange Building, 9/F Motijheel C/A, Dhaka.
10. Chittagong Stock Exchange (CSE), represented by its Managing Director, address: Chittagong Stock Exchange Ltd. CSE Building, 1080, Sk. Mujib Road Agrabad, Chittagong.

.....Respondents.

To,

Mr. Justice Syed Mahmud Hossain, of the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the petitioners most respectfully—

S H E W T H:

1. That the petitioners are the shareholders of the respondent No. 1 company (*shortly referred to as 'the company'*). The petitioner No. 5 is the promoter shareholder and the other petitioners are the foreign shareholders except the petitioner No. 6 who is a Bangladeshi shareholder.
2. That the respondent No. 1 is the Bangladesh Development Finance Company Limited (BDFC), a public limited company having Registration No. C-33341, Dhaka, address: Police Plaza Concord (Tower-2), Level 8, Plot No. 12, Road No. 145, Gulshan, Dhaka-1212, represented by its Managing Director, the respondent Nos. 2 and 3 are the Chairman and Managing Director of said company, respectively, and the respondent Nos. 4-6 are the Directors of the said company, the respondent No. 7 is the RJSC, the respondent No. 8 is the BSEC and the respondent Nos. 9-10 are the Stock Exchanges of our country.
3. That addresses of the petitioner and respondents given in the cause title are true and correct for the purpose of service of notices, summons, etc.
4. That as per the Annual Report of 2017 of the respondent No. 1 the current shareholding position of the petitioners in the respondent No. 1 company is as follows—

Shareholders	Numbers of shares
FC Credit Ltd (Petitioner No. 5)	19.39
TM Inc. (Petitioner Nos. 1-2)	18.01
MF Inc. (Petitioner Nos. 3-4)	12.0
Limon Dresses Limited (Petitioner No. 6)	5.82
	55.82

Since the petitioners are holding more than 10% of shares, therefore, they have the locus standi to file this company matter by invoking jurisdiction under section 233 of the Companies Act, 1993. Copy of the Annual Report 2017 is annexed hereto and marked as Annexure- “A”.

5. That it is stated that the shareholding structure of the company includes 37% shares of the sponsors as per the Annual Report, 2017. Moreover, the petitioners are holding 55.82%. It means there is no representation in the Board either from the foreign investors or from the sponsors/promoters. There is none in the Board representing these significant numbers of shareholders. Though the petitioners are holding substantial shares, however their rights are seriously being violated by the respondent Nos. 2-6 that the petitioners have become minority in number, in fact no number of representations in the Board, for protecting their rights and interests as well as ensuring check and balance in the Board. The present Board of Directors are mainly dominating by following shareholders having nominal shares—

Name of Directors	Numbers of shares
SV Ltd (Respondent No. 5)	5.46
KV Ltd (Respondent No. 4)	3.52
Pranti Life Insurance Ltd (Respondent No. 6)	2.27
	11.25

Along with the following Independent Directors—

1. H. Rashid,
2. Abdul Hai,
3. Riaz Uddin,
4. Jahangir Alam.

Therefore, it is evident from the Annual Report, 2017 that there are five (5) Independent Directors against four (4) Directors. The Corporate Governance Guidelines provided by the Bangladesh Securities and Exchange Commission (BSEC) provides that “at least one fifth (1/5) of the total number of directors in the company’s board shall be independent directors”. Therefore, the numbers of independent directors will not be more than general directors. But the present status of the Board of Directors of the respondent No.1 Company is showing the opposite which is a clear violation of relevant laws.

6. That it is stated that the respondent No. 1 company was incorporated with the minimum paid up capital of the company taka 5 (five) crore hold by the various groups of shareholders in the following manner—

[A]	Group-A Share Holding	Bangladesh Shareholders	
		Initial Contribution on Public Issue	
1.	Sponsors	25%	12.18%
2.	Public Issue	--	37.82%
		25%	50.00%
[B]	Group-B Foreign Share Holder	75%	50.00%
		100%	100.00%

Under the said circumstances, the first Board of Directors was constituted in the following manner—

1.	Mr. Abdul Alim	-1 Director Group-A
2.	Mr. Abu Sayeed	-1 Director Group-A
3.	Mr. Shaown Ahmed	-1 Director Group-A
4.	Mr. Shing Zuan, Nominated of M/S. FC Credit Ltd (Petitioner No.5)	-4 Directors Group-B

It is evident from the said table that there were 4 (four) representations from the foreign investors in the first Board of Directors. Therefore, it was the clear intention that there should be effective representations in the Board of Directors from the foreign investors. And it was always there till 2015. Photocopies of Incorporation Certificate, MOA and AOA are annexed hereto and marked as Annexure- “B Series”.

7. That the aforesaid situation had been peacefully continued till 2015 having proper representations always from the foreign shareholders in the Board of Directors of the respondent No. 1 company. But the situation got changed thereafter. A strong and powerful syndicate acted to grab the company through removal of those Directors from the Board of the company. They have gradually captured the entire management, business and affairs of the company and completely ousted the petitioners. The entire situation is clear from a letter dated 12.06.2018 of the petitioners submitted to the Hon'ble Minister of the Ministry of Finance. Photocopy of the letter dated 12.06.2018 is annexed hereto and marked as Annexure- “C”.
8. That since 2016 the petitioners have been continuously denying and preventing by the respondent Nos. 2-6 from entering into any business and affairs of the respondent No. 1 company. They are not being serving any notice or providing any information or document of the company. They are not even allowing the petitioners to enter into the premises of the respondent No. 1 company. The respondents are not maintaining the business and affairs of the Company in proper way and have already enhance the loan liability of the respondent No. 1 company.
9. That the petitioners are holding substantial shares in the respondent No. 1 company. Therefore, there should have some representations in the respondent No. 1 company. But since there is no representation in the company for or on behalf of the petitioners, therefore their rights are being violating and prejudicing highly. The petitioners tried to come into a solution with the respondents by filing several representations both in writing and verbal, but have got no response yet. Even the proxies of the petitioners have not been accepting by the respondents.
10. That under the circumstances, the respondent No. 1 is going to hold its 22nd Annual General Meeting on 7.08.2018, but no notice for holding AGM has been served upon the petitioners. However, on 21.07.2018 the petitioners somehow collected the Annual Report, 2017 which contains a notice for holding AGM amongst others. It appears from the Audit Report that the notice for holding AGM was issued on 19.07.2018, but no such notice was served upon the petitioners. The notice is containing following agendas—

- “1. To receive, consider and adopt the directors’ report and auditors’ report to the shareholders, accompanied by audited financial statements for the year ended December 31, 2017;
2. To declare dividend for the year ended December 31, 2017;
3. To elect/re-elect director(s);
4. To appoint auditor for the year 2018 and fix their remuneration;
5. To transact any other business of the Company with the permission of the Chair.”

Therefore, it is very much clear from the above that there will be change in the Board of Directors of the respondent No. 1 company.

11. That it is stated that notice for holding AGM was not served intentionally upon the petitioners so that they cannot access to the provisions as provided under clause 118 of the AOA of the company—

“No person, not being a director retiring by rotation shall, unless recommended by the Director for election, be eligible for election to the office of Director at any general meeting, unless he or his authorised agent has at least seven clear days before the meeting, left at the office a notice in writing under his hand or under the hand of such as agent signifying assent to his candidature for the office of Director.”

However, the petitioners immediately after knowing about the said 22nd AGM, the petitioners filed representations showing their willingness to be the directors i.e. for contesting for the post of Director in the company. The representations were received by office of the respondent No. 1 on 5.08.2018. Photocopies of the representations are annexed hereto and marked as Annexure- “D Series”.

12. That the petitioners have also submitted representations for casting their votes through proxies in the said AGM, but the respondent Nos. 1-6 refused to accept the proxies from the petitioner Nos. 1-5 who are the foreign shareholders. They have only accepted the proxy of the petitioner No. 6 who is a Bangladeshi shareholder. Photocopies of those proxies form are annexed hereto and marked as Annexure- “E Series”.
13. That the petitioners are holding an important number of shares in the respondent No. 1 company but they have fallen very minor and neglected in the Board of Directors as well as in the overall business of the company. The respondent Nos. 2-6 backed by a strong political and financial group have made the petitioners minor and insignificant in terms of management and business of the respondent No. 1 company. This has created an imbalance in the management of the company which is causing serious loss and injury not only to the depositors and shareholders of the company but also to the entire business of the company. It is ruining confidence of the investors, depositors and shareholders. On the other hand, it is enhancing arbitrariness, malafide, illegalities and unreasonableness of the respondent Nos. 2-6 in the company. The upcoming AGM and the present condition of the Board of Directors are the clear reproduction of the arbitrariness and malafide activities of the

respondent Nos. 2-6 in the respondent No. 1 company. In order to ensure the effective protection of the rights of all classes shareholders and investors in the company, the petitioners should be given fair and reasonable chance to represent in the Board of Directors of the company. It will ensure fairness, accountability, transparency, check and balance in the management, affairs, business and administration of the company. But in the way the respondent Nos. 1-6 are going to held 22nd AGM on 7.08.2018 will acutely prejudice the rights, interests and entitlements of the petitioners as well as the large numbers of general shareholders and depositors of the company.

14. That it is stated that after submission of said representations by the petitioners for contesting for the post of directors and for proxy voting, the petitioners are being continuously threatening by the respondent Nos. 2-6 and their intimated persons along with the vested quarters that the petitioners will not be allowed to attend the AGM. It makes the matter obvious that there is high threat of committing chaos and indiscipline by the respondent Nos. 2-6 in the AGM if the petitioners go to take part in the AGM. They may also have been physically attacked. For that reason, the petitioners are very afraid of attending the AGM. Therefore, the AGM should be conducted by an Independent Commissioner under the supervision of the Hon'ble Court.
15. That in view of the above, the petitioners are being depriving in every possible ways from taking part into management, business, affairs and functions of the company. Therefore, finding no other alternative, the petitioners are invoking the jurisdiction of this Hon'ble Court.
16. That the petitioner craves leaves of the Hon'ble Court to file this petition with the photocopies of Annexures as the original are lying with the petitioner and may be produced as per the direction of this Hon'ble Court.

WEHEREFORE, it is most humbly prayed that Your Lordship may graciously be pleased—

- (a) To admit this application,
- (b) To direct service of usual notices and publication of the same in the Daily News papers,
- (c) To allow the petitioners to take effective participation in the Board of Directors of the respondent No. 1 company;
- (d) To stop holding 22nd Annual General Meeting (AGM) dated 7.08.2018 under the present management of the respondent No. 1 company without giving any chance of participation to the petitioners in the Board of Directors;

- (e) To publish fresh notice for holding 22nd Annual General Meeting (AGM) afresh under the independent receiver/commissioner as appointed by this Hon'ble Court by ensuring effective participation of the petitioners for contesting for the post of Directors of the respondent No. 1 company;
- (f) And pending hearing of the application, be further pleased to Stay the upcoming 22nd Annual General Meeting (AGM) going to be held on 7.08.2018 or the respondent Nos. 1-6 may kindly be restrained by an order of injunction from preventing or causing any hindrance/embargo upon the petitioners and their proxies to take part in the said 22nd AGM for contesting for the post of Directors of the respondent No. 1 company for ends of justice;
- (g) And pending hearing of the application, be further pleased to appoint an Independent Commissioner either from the Lawyers or from recognized Chartered Accountants for conducting the vote/election for appointment of directors of the respondent No. 1 company in the 22nd AGM under the supervision of the Hon'ble Court;
- (h) To pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness, the petitioner as in duty bound, shall ever pray.

A F F I D A V I T

I, Mohammad Rashid, son of late Abdur Rahim and late Farah Mahbub, Nominated Director of TM Inc., a shareholder of Bangladesh Development Finance Company Limited (BDFC), of 32 East 42nd Street, Suit 3100, New York, NY 11168, and address: House # 14, Block-B, Aftabuddin Road, Bashundhara R/A, Dhaka, permanent address: House No. 14, B-4, Block-B, R/A, Road-Aftab Uddin Ahammad Road Bashundhara, Jowar Sahara, Post Office- Khilkhet-1229, Badda, Dhaka City Corporation, Dhaka, Date of Birth- 07 September 1945, by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No. 2690465655756, do hereby solemnly affirm as follows:—

1. That I am the petitioner No. 1 of this company matter and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(.....)

Advocate

Membership #

Hall Room No.2, Supreme Court Bar

Association Building

Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

A F F I D A V I T

I, Irfan Ahmed, son of Milon Ahmed and Roma Ahmed, Nominated Director of TM Inc., a shareholder of Bangladesh Development Finance Company Limited (BDFC), of 122 East 42nd Street, Suit 2100, New York, NY 11168, 1/B, Eastern Housing Apartment Siddeshwari, Dhaka-1217, permanent address: House- Eastern Housing Apartment, Road- 102-104, Elephant Road, Boro Mogbazar, Post Office- Shanti Nagar-1217, Ramna, Dhaka South City Corporation, Dhaka, Date of Birth- 08 April 1955, by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No. 7773769802, do hereby solemnly affirm as follows:—

1. That I am the petitioner No. 2 of this company matter and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.

2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT
The deponent is known to me
and identified by me.

(.....)
Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

A F F I D A V I T

I, Abdul Roman, son of late Mohammad Selim and Most. Tasnim, Nominated Director of MF Inc., a shareholder of Bangladesh Development Finance Company Limited (BDFC), of House # 211, Road # 07, Block # F, Bashundhara R/A, PS: Vatara, Dhaka-1229, permanent address: House- Ahmad Ullah Pandit Bari, Road- Gandabpur, Gandabpur, Post Office- Hirammon Bazar- 3702, Lakhipur Sadar, Lakhipur, Date of Birth- 02 February 1974, by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No. 5114370891732, do hereby solemnly affirm as follows:—

1. That I am the petitioner No. 3 of this company matter and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT
The deponent is known to me
and identified by me.

(.....)
Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

A F F I D A V I T

I, M..M. Siraj, son of Tamijuddin Ahmed and Panna Khanom, Nominated Director of MF Inc., a shareholder of Bangladesh Development Finance Company Limited (BDFC), of House # 04, Road # 18, Sector # 13, Uttara, Dhaka, permanent address: House No. 10, Road- 16, 11 No. Sector, Post Office- Uttara-1230, Uttara, Dhaka, Date of Birth- 10 May 1967, by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No. 2619451919156, do hereby solemnly affirm as follows:—

1. That I am the petitioner No. 4 of this company matter and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT
The deponent is known to me
and identified by me.

(.....)

Advocate

Membership #.....

Hall Room No. 2, Supreme
Court Bar Association Building

Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

A F F I D A V I T

I, Hasan Ali, so of late Md. Kutub Uddin and late Meherun Nessa, Nominated Director of FC Credit Ltd., a shareholder of Bangladesh Development Finance Company Limited (BDFC), of Unit # 03, 12nd Floor, Kwai Fong Commercial Centre, Department of Sociology, University of Chittagong, permanent address: House No. 2268, Jakir Hossain Road Bailain, Road- Jakir Hossain Road Bailain, Jakir Hossain Road Bailain, Post Office- P T I-4209, Khulsi, Chittagong City Corporation, Chittagong, Date of Birth- 03 February 1952, by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No. 1599008748202, do hereby solemnly affirm as follows:—

1. That I am the petitioner No. 5 of this company matter and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(.....)

Advocate

Membership #

Hall Room No .2, Supreme
Court Bar Association Building

Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

A F F I D A V I T

I, Md. Omar Sharif, Nominated Director of Limon Dresses Limited, a shareholder of Bangladesh Development Finance Company Limited (BDFC), of Room-5025(A), SCBA Annex Building, Supreme Court, Dhaka, permanent address: House No. 3, Flat No. 4/C, Road No. 13/B, Sector No. 6, Post Office- Uttara-1230, Uttara, Dhaka Uttar City Corporation, Dhaka, date of birth: 01 January 1968, by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No. 9551887804 do hereby solemnly affirm as follows:—

1. That I am the petitioner No. 6 of this company matter and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.
2. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(.....)

Advocate

Membership #
Hall Room No.2, Supreme
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Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

COMPANY MATTER NO. . OF 2017

IN THE MATTER OF:

An application under section 43 and 233 of the Companies Act, 1994.

ANDIN THE MATTER OF :

1. Mst. Halima Khatun, wife of Alhaj Kabir Ahmed,
Address: House- 3035/3511 Abdus Salam Sardar
Bari, Road- Alhaj Jalil Road, Kazi Para, Post
Office- Custom Academy - 4219, Pahartali,
Chittagong City Corporation, Chittagong.
2. Mst. Firoja Begum, wife of Md. Sirajuddhowla,
daughter of Alhaj Kabir Ahmed and Halima
Khatun Address: House- Meher Ali Bhuiyan Bari,
Village- Rampur, Rampur (Modhanshow), Post
Office- Feni-3900, Feni Pourashava, Feni Sadar,
Feni.
3. Mst. Nasima Ahmed, wife of Sheikh Farid
Ahmed, daughter of Alhaj Kabir Ahmed and
Halima Khatun, Address: House- Dulamia
Matabbar Bari, Village- Maddham Farhadnagar,
Farhadnagar, Post Office – Farhadnagar - 3901,
Feni Sadar, Feni.
4. Mst. Masuma Asad Nitu, wife of Shakil
Mohammad Asad, daughter of of Alhaj Kabir
Ahmed and Halima Khatun, Address: House-
Meher Bhaban, Road - B M A Gate, Vatiari, Post
Office- Vatiari-4315, Sitakundu, Chittagong.
5. Mst. Mafuza Akter, wife of Md. Mahabub Alam,
daughter of Alhaj Kabir Ahmed and Halima
Khatun, Address: House- Flat-102, Haiperial
Green Park-2, Pallabi, Road- 2-D/4, Pallabi, Post
Office- Mirpur-1216, Pallabi, Dhaka.

6. Mst. Amena Begum, wife of Golam Kabir Bhuiyan, of Alhaj Kabir Ahmed and Halima Khatun, Address: Road- Kamal Hazari Bari, Birinchi, Post Office- Feni-3900, Feni Sadar, Feni Pourashava, Feni.

..... Petitioners.

—Versus—

1. Mohammad Ismail, Son of late Alhaj Kabir Ahmed and Halima Khatun, Permanent Address: Alhaj Kabir Sowdhagar Bari, Abdul Jalil Road, Uttar Saraipara, 12 No Word, Post Office- Custom Academy, Police Station- Pahartali, District- Chittagong.
Present Address: Kohinoor Compred & Major Flour Mills Ltd (Soudia Maida). Of DT Road, Pahartali, Chittagong.
2. Kohinur Compred & Major Flour Mills (Private) Ltd., A Company registered with the Registrar of Joint Stock Companies & Firms (RJSC), Chittagong, Incorporation No. CH. 1178 of 1992, Address: DT Road, Pahartoli, Chittagong.
3. Registrar of Joint Stock Companies & Firms (RJSC), Chittagong, Address: CDA Annex Building (5th Floor), Kotowali, Chittagong.

..... Respondents.

To,

Mr. Justice Md. Muzammel Hossain, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the Hon'ble Supreme Court of Bangladesh.

The humble petition of the above named petitioner most respectfully—

S H E W E T H :

1. That the petitioners and the respondent No. 1 all are the successors of late Alhaj Kabir Ahmed, son of Sukkur Ahmed, address: House of Alhaj Kabir Showdagar, Abdul Jalil Road, North Shoraipara, Ward No. 12, Post Office- Custom Academy, Police Station- Pahartali, District- Chittagong.
2. That the respondent No. 1 is a shareholder in the respondent No. 2 company whereas the respondent No. 2 is a private limited company by shares registered under the Companies

Act, 1913 (*said Act*) having incorporation no. CH. 1178 of 1992 carrying out business of flour, and other products. The respondent No. 3 is the RJSC, Chittagong.

3. That the addresses given in the cause title of this petition are correct address for the purpose of serving summons and notices upon the parties.
4. That it is stated that the father of the petitioners and the respondents No. 1 namely late Alhaj Kabir Ahmed, son of late Abdul Shukkur was very industrious and successful businessman during his lifetime. He earned a lot of financial solvency and social reputation by his long professional dedication and hard work. He left huge assets, properties and money including the highly successful and profitable company namely Kohinoor Compred & Major Flour Mills (Private) Limited (shortly as “the said company”) at the time of his departure. Photocopy of the MOA and AOA of the company is annexed hereto and marked as Annexure-“A”
5. That it is stated that said Mr. Kabir Ahmed died on 20.02.2012 . At the time of his death he held 2000 shares in said company, which shares construed 50% of the total shares of the company. Before his death, he did not transfer his shares to anyone. The respondent No.1 also holds 2000 shares in the company. There were only 2 (two) shareholders-directors in the Company at the time of departure of said Mr. Kabir, and till date the status of the Company in respect of shareholder and director is still the same. The respondent no. 2 is the eldest amongst children of Mr. Kabir who included the respondent in the Company. Basically, it was Mr. Kabir who alone established, contributed, developed and promoted the Company.
6. That it is stated that it has been 4 (four) years since said Mr. Kabir Ahmed has left, but the respondent No. 1 has not updated the Share Registrar, Return of shares (Schedule X), Particulars of directors (Form XII) documents of the company either by confirming transmission of aforesaid shares in the name of his successors i.e. the petitioner and the respondent No. 1 and also has not held and observed any Annual General Meeting (AGM) or Audit Report or any other procedures under law. The petitioners somehow collected a copy of the Form XII of the company on 12.01.2016 from the office of the respondent no. 3. Photocopy of Form 12 annexed hereto and marked as Annexure-“B”.
7. That it is stated that the petitioners requested respondent No. 1 repeatedly time to time for updating the aforesaid documents/records of the company. Initially the respondent no. 1 verbally committed that he will take all necessary steps for updating the share register and other documents of the Company and will also share the income, profits and benefits of the Company with the petitioners in according to their respective shareholding interest in the Company; but at one point of time the respondent No. 1 completely stopped communicated with the petitioners and grabbed all assets and properties of late Mr. Kabir alone. To get respective shares in the said company, the petitioners also obtained a succession certificate, through Succession Miscellaneous Case No. 151 of 2016 on 20.09.2016, but the respondent No. 1 has not updated the Share Registrar and all other necessary documents/records of the Company yet. According to the Succession Certificate the petitioners and the respondent no. 1 are entitled to the shares of late Mr. Kabir in the following manner—

Sl No.	Successors	Respective Shares
1.	Mst. Halima Khatun (the petitioner no. 1)	1/8 th share Tk. 25,000/=
2.	Mohammed Ismail (the respondent no. 1)	2/8 th share Tk. 50,000/=
3.	Mst. Feroza Begum (the petitioner no. 2)	1/8 th share Tk. 25,000/=
4.	Mst. Nasima Akter (the petitioner no. 3)	1/8 th share Tk. 25,000/=
5.	Mst. Masuma Akter (the petitioner no. 4)	1/8 th share Tk. 25,000/=
6.	Mst. Mahfuza Akter (the petitioner no. 5)	1/8 th share Tk. 25,000/=
7.	Mst. Amena Khatun (the petitioner no. 6)	1/8 th share Tk. 25,000/=

Photocopy of the death and succession certificate dated 20.09.2016 is annexed hereto and marked as Annexure-“C” & “C-1”.

8. That on the other hand, the respondent No. 1 very fraudulently and illegally filed a Partition Suit being No. 396 of 2015 and obtained an injunction against the petitioners in respect of almost all properties of said late Mr. Kabir while the petitioners had never had any objection or problem in the amicable settlement with the respondent No.1. But the respondent No. 1 has never co-operated the petitioners and very illegally, arbitrarily and malafide have continued to deprive the petitioners from the moment since Mr. Kabir had left on 20.02.2012. The respondent No. 1 has grabbed all the moveable and immoveable properties including all money in bank accounts and otherwise belonging to said late Mr. Kabir. Photocopies of the plaint, written statements, injunction application and order granting injunction is annexed hereto and marked as Annexure-“D” series.
9. That under the aforesaid circumstances the petitioners sent legal notice on 17.01.2017 via registered A/D Post requesting the respondent No. 1 to give the respective shares to the petitioners as per the said succession certificate (attached hereto) by updating Share Registrar and Schedule X of the company, to allow them in the Board of Director of the Company, to give them their respective portions/entitlements in the share, asset, properties, benefits and income of the company and also to come for amicable settlement in respect of aforesaid partition suit within 7 (seven) days of this notice; but the same has met with no reply yet. Copy of the notice dated 17.01.2017 along with registry slip is annexed hereto and marked as Annexure-“E”.
10. That it is stated that the respondent no. 2 company is a highly profitable concern. Though the petitioners have no current data regarding financial affairs of the Company since they are completely restrained from entering into the property and business of their father late Mr. Kabir and also into the Company. However, as the petitioners know that at the time of departure, their father left properties and assets valuing more than 80-100 crore including the respondent no. 2 Company. During his lifetime, the monthly turnover of the Company was not less than 30,000,00= to 40,000,00= apart from other income arising out of other assets and properties of late Mr. Kabir. Income of late Mr. Kabir from other properties and assets was also not less. In the year 2005-2006, the tax office prepared an investigation report regarding assets, liabilities and properties of late Mr. Kabir. The petitioners somehow collected an unsigned copy of that report, income tax certificate of Mr. Kabir and bank statements from Southeast Bank Ltd and National Bank Ltd. Photocopies of that report, income tax certificate of Mr. Kabir and a bank statement from Southeast bank are annexed hereto and marked as Annexure-“F” Series.

11. That it is stated that the respondent no. 1 all alone is enjoying the entire assets, profits, benefits and income of late Mr. Kabir and the respondent no. 2 Company. He is depriving the petitioners of their statutory as well as Quranic rights to succeed the assets, properties and interests of late Mr. Kabir. He is not only depriving the petitioners of taking part in the business, affairs and functions of the respondent no. 2 Company in according to their respective shareholding rights in the Company by way of succession but also depriving them of taking other properties of late Mr. Kabir by abusing the process of law. The respondent no. 2 is now one man Company by the respondent no. 1 who should not be allowed to operate by a person. One person cannot form and continue a Company. Late Mr. Kabir Ahmmed wanted that all his successors would get their respective shares in according to Sharia Law since he was very pious and religiously dedicated person; but the respondent no. 1 did not care of his innocent wishes and religious duties, and very illegally, arbitrarily and malafide is grabbing and enjoying all the moveable, immoveable properties, assets, benefits of Mr. Kabir including the respondent no. 2 Company. Mr. Kabir died on 20.02.2012, but since 2009 (from when Mr. Kabir became ill), the respondent no. 1 alone is capturing the Company. During the last days of Mr. Kabir, he used to have quarreled for several times with the respondent no. 1 regarding the assets and sharing of profits of other successors (i.e. the petitioners) of the Company.
12. That moreover, the respondent no. 1 is not updating the share register of the Company, Form XII, Returns of Share Allotment, holding Annual General Meeting (AGM), Board Meeting, having Audit, preparing Audit Report and also not observing other formalities as prescribed under the Companies Act, 1994. Recently, the petitioners have come to know that the respondent no. 1 is transferring the entire assets, properties and income of late Mr. Kabir and the Company to his personal name of otherwise by using technical devices in order to deprive the petitioners permanently of the assets, properties and income of late Mr. Kabir and the Company; which is illegal, arbitrary and should be prevented for ends of justice.
13. That under the aforesaid premises, the petitioners finding no other alternative but to invoke the jurisdiction of this Hon'ble Court under section 43 for rectification of Share Register of the respondent no. 2 Company by transmission of shares by inserting the names of the petitioners for their respective shares in according to the aforesaid secession certificate and also to ensure their rights to the assets, properties, income, profits and liabilities to the respondent no. 2 Company, and also to ensure their rights in the management, affairs and business of the Company under section 233 and other provisions of the Companies Act, 1994.
14. That the petitioner is submitting the photocopies of the annexure, originals of which are kept in the office record of the petitioners and the respondents and if necessary, the petitioners will be under duty to produce the originals of those which are in their possession and the respondents will also be under duty to produce the originals of those which are in their possession at the time of hearing of this petition.
15. That in the premises aforesaid, the petitioners finding no other alternative, beg to file this application under Section 43 and 233 of the Companies Act, 1994 for protecting the interest of the minority shareholder i.e. the petitioner.

WHEREFORE, it is most humbly prayed that Your Lordship may graciously be pleased—

- (a) To admit this application,
- (b) To direct service of usual notices and publication of the same in the Daily News papers,
- (c) To rectify the Share Register of the respondent no. 2 Company and pass necessary Order(s) directing the respondents in this regard,
- (d) To conduct the affairs of the Company as per the provisions of the Articles of Association of the Company and the Companies Act, 1994 by ensuring proper representations of the petitioners in the management and affairs of the respondent no. 2 Company as per their respective shares,
- (e) To call a Board Meeting for the appointment of Auditor, appointment or reappointment of Chairman, Managing Director, Board of Directors and for the preparation of holding AGM's (Annual General Meeting) for the years 2009 – 2017 by condoning the delays in holding those AGM's from this Hon'ble Court,
- (f) To direct the respondent no. 1 to disclose/submit a details statement showing the entire assets, properties (moveable & immoveable), income and benefit of the respondent no. 2 Company along with late Mr. Kabir Ahmmed before this Hon'ble Court,
- (g) To direct the respondent no. 1 to disclose/submit a details statement showing the entire transaction, financial affairs and business of the respondent no. 2 Company from Year 2009 – 2017 before this Hon'ble Court,
- (h) And pending hearing of the application, be further pleased to pass an Order of Injunction restraining the respondent no. 1 from transferring, destroying or disposing of the assets, properties and income of the respondent no. 2 Company to anyone,
- (i) To pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness, the petitioner as in duty bound, shall ever pray.

AFFIDAVIT

I, Mst. Halima Khatun, wife of Alhaj Kabir Ahmed, daughter of Rois Mia, Address: House- 3035/3511 Abdus Salam Sardar Bari, Road- Alhaj Jalil Road, Kazi Para, Post Office- Custom Academy - 4219, Pahartali, Chittagong City Corporation, Chittagong, aged about- 65 years, by Faith- Muslim, by occupation- business, a Bangladesh national having national ID No. 1595512881965, do hereby solemnly affirm and say as follows:—

01. That I am the petitioner no. 1 of this case and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

DEPONENT

The deponent is known to me and identified by me.

Solemnly affirmed before me by
the said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2016
at A.M./P.M.

(.....)
Advocate

Membership #.....
Hall Room No. 2, Supreme
Court bar Association Building
Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

AFFIDAVIT

I, Mst. Firoja Begum, wife of Md. Sirajuddhowla, daughter of Alhaj Kabir Ahmed and Halima Khatun Address: House- Meher Ali Bhuiyan Bari, Village- Rampur, Rampur (Modhanshow), Post Office- Feni-3900, Feni Pourashava, Feni Sadar, Feni, date of birth: 2.01.1975, by Faith- Muslim, by occupation- business, a Bangladesh national having national ID No. 3022917165891, do hereby solemnly affirm and say as follows:—

01. That I am the petitioner no. 2 of this case and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.

02. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

DEPONENT

The deponent is known to me and identified by me.

Solemnly affirmed before me by
the said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2016
at A.M./P.M.

(Syeda Nasrin)

Advocate

Membership #

Hall Room No. 2, Supreme

Court bar Association Building

Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

A F F I D A V I T

I, Mst. Nasima Ahmed, wife of Sheikh Farid Ahmed, daughter of Alhaj Kabir Ahmed and Halima Khatun, Address: House- Dulamia Matabbar Bari, Village- Maddham Farhadnagar, Farhadnagar, Post Office – Farhadnagar - 3901, Feni Sadar, Feni, date of birth: 1.11.1978, by Faith- Muslim, by occupation- business, a Bangladesh national having national ID No. 3012925317989, do hereby solemnly affirm and say as follows:—

01. That I am the petitioner no. 3 of this case and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

DEPONENT

The deponent is known to me and identified by me.

Solemnly affirmed before me by
the said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2016
at A.M./P.M.

(.....)
Advocate
Membership #
Hall Room No. 2, Supreme
Court bar Association Building
Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

A F F I D A V I T

I, Mst. Masuma Asad Nitu, wife of Shakil Mohammad Asad, daughter of of Alhaj Kabir Ahmed and Halima Khatun, Address: House- Meher Bhaban, Road - B M A Gate, Vatiari, Post Office- Vatiari-4315, Sitakundu, Chittagong, date of birth: 12.03.1983, by Faith- Muslim, by occupation- business, a Bangladesh national having national ID No. 15118638333533, do hereby solemnly affirm and say as follows:—

01. That I am the petitioner no. 4 of this case and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

DEPONENT

The deponent is known to me
and identified by me.

Solemnly affirmed before me by
the said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2016
at A.M./P.M.

(.....)

Advocate

Membership #

Hall Room No. 2, Supreme
Court bar Association Building

Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

A F F I D A V I T

I, Mst. Mafuza Akter, wife of Md. Mahabub Alam, daughter of Alhaj Kabir Ahmed and Halima Khatun, Address: House- Flat-102, Haiperial Green Park-2, Pallabi, Road- 2-D/4, Pallabi, Post Office- Mirpur-1216, Pallabi, Dhaka, date of birth: 9.07.1984, by Faith- Muslim, by occupation- business, a Bangladesh national having national ID No. 2696406747819, do hereby solemnly affirm and say as follows:—

01. That I am the petitioner no. 5 of this case and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)

Advocate

DEPONENT

The deponent is known to me
and identified by me.

Solemnly affirmed before me by
the said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2016
at A.M./P.M.

(.....)

Advocate

Membership #

Hall Room No. 2, Supreme
Court bar Association Building

Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

A F F I D A V I T

I, Mst. Amena Begum, wife of Golam Kabir Bhuiyan, of Alhaj Kabir Ahmed and Halima Khatun, Address: Road- Kamal Hazari Bari, Birinchi, Post Office- Feni-3900, Feni Sadar, Feni Pourashava, Feni, date of birth: 1.07.1986, by Faith- Muslim, by occupation- business, a Bangladesh national having national ID No. 3022903130105, do hereby solemnly affirm and say as follows:—

01. That I am the petitioner no. 6 of this case and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

Solemnly affirmed before me by
the said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2016
at A.M./P.M.

Deponent
The deponent is known to me and
identified by me.

(.....)
Advocate
Membership #
Hall Room No. 2, Supreme
Court bar Association Building
Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

COMPANY MATTER NO. 602 OF 2016.

IN THE MATTER OF:

Mrs.Sumona Chowdhury and another.

.....Petitioners.

-Versus-

XZ Airlines Limited and others.

.....Respondents.

AFFIDAVIT-IN-REPLY ON BEHALF OF THE RESPONDENT NO. 1 COMPANY TO THE
SHOW CAUSE ORDER DATED 15.05.2016 PASSED BY THIS HON'BLE COURT.

I, Abdul Mukim, son of late Abdul Rimon Sattar, Managing Director of the Respondent No. 1 Company XZ Airlines Ltd., a Public Limited Company, of Rumi Tower, Plot No. 5 & 8, Road No. 21, Nikunja-2, Dhaka- 1229 by profession- Service, aged about- 59 years, by faith- Muslim, by nationality Bangladeshi having National ID No. 269263542566, do hereby solemnly affirm and say as follows:—

1. That I am the Managing Director of the respondent No. 1 company in this case and as such fully acquainted with the facts and circumstances of the case, and as such, I am competent to swear this affidavit.
2. That the petitioners filed the instant matter under section 241, 242 read with section 140(1), 140(2) and 145 of the Companies Act, 1994 (*henceforth referred to as 'the Act'*) before this Hon'ble Court. After hearing the petitioners the Hon'ble Court was pleased to issue show cause vide Order dated 15.05.2016; a copy of the said Order along with the application of the petitioners was served upon the respondent No. 1 company who has gone through the matter, consulted with the learned Advocate and decided to controvert.
3. That this company matter is misconceived and misunderstood, and is not maintainable in its present form and manner; as such the same is liable to be rejected.
4. That the statements of the application which are not specifically admitted hereinafter are deemed to have been denied.
5. That the statements made in paragraph No. 1 regarding purchase of shares by the petitioners are matters of record; hence call for no comments.
6. That the statements made in paragraph Nos. 2-3 describing the respondents are matters of records; hence call for no comments.
7. That the statements made in paragraph Nos. 4 and 5 regarding the purchase of 7,00,000 number per-IPO shares from the respondent No. 1 Company, deposition of cheque for

repayment of money, encashment of said cheque by the respondent No. 1 company and issuance of money receipt are matters of record; hence call for no comments. The petitioners are under strict liability to prove their claim.

8. That the statements made in paragraph No. 6 describing the business of the respondent No. 1 company is true.
9. That the statements made in paragraph No. 7 regarding how they attracted in purchasing per-IPO shares from the respondent No. 1 company are also matters of record; hence call for no records.
10. That the statements made in paragraph No. 8 regarding their communication with the respondent No. 1 company from April 2010 to February 2016 for returning back the money, misappropriation of money by the respondent No. 1 company and returning back the pre-IPO money to some influential and powerful shareholders are false incorrect and misconceived; hence denied by the respondents.
11. That the allegation made by the petitioners in paragraph No. 9 that the relationship between the petitioners and the respondents deteriorated because the respondents did not maintain their commitment is false, incorrect and misconceived; hence denied by the respondents.
12. That the statements made in paragraph Nos. 10 and 11 regarding sending of legal notice dated 7.03.2016 and reply notice dated 27.03.2016 are also matters of record; hence call for no comments.
13. That the statements made in paragraph No. 12 regarding declaration made in page No. 27 of the 'Market for Securities being Offered' are not true. The fact is, the respondent No. 1 company with intention to trade in the stock market issued shares through private placement. But, issuance of stocks in the stock market depends on permission from the Bangladesh Securities and Exchange Commission (BSEC) and DSE & CSE, but the BSEC has yet to give permission and approval to the respondent No.1 company for issuing shares in the stock market. The respondent No. 1 is still trying to obtain permission from the BSEC.
14. That the statements made in paragraph No. 13 alleging that the respondent No. 1 failed to comply to the petitioners and virtually failed to be enlisted with the BSEC are also false, incorrect and misconceived. The fact is, the respondent No. 1 company offered shares through issue manager who sold shares of the petitioner through private placement. The respondent No. 1 has always wanted to go for public offering of shares, but due to share market crash 2010-2011, the BSEC has not permitted the respondent No. 1 company to issue IPO shares, thus to trade in the stock market. Once the respondent No. 1 company would be allowed by the BSEC, then the petitioners could trade their shares in the market.
15. That the statements made in paragraph No. 11 regarding collective or joint liability of the respondents under section 140(1) read with section 140(2) of the Companies Act, 1994 and the claims of the petitioners are false, incorrect and not tenable in the eye of law; because, the petitioners purchased the shares from the issue manager and underwriter through private placement. Hence, Section 140(1) and 140(2) have no application to the fact of the petitioners. As such, the present application of the petitioners is not sustainable in law.

16. That the statements made in paragraph No. 15 regarding issuance of share certificate and non-declaration of any cash or any other dividend are incorrect and misconceived. It is an admitted position of the petitioners that share certificates were duly issued to them by the respondent No. 1 company. Therefore, being the shareholders of the company they cannot seek remedy under section 140(1) and 140(2) of the Companies Act, 1994. As such, the present application of the petitioners is not maintainable in the eye of law, and the same is liable to be rejected summarily.
17. That the statements made in paragraph No. 16 regarding suspension of all flight operations of the respondent No. 1 company is a matter of record. The respondent No. 1 company is restricting its business and will come into operation soon.
18. That the statements made in paragraph No. 17 regarding shifting of money from the account of the respondent No. 1 company, claim under section 140(1) and 140(2) read with section 142 or also under section 141, 142 read with section 145 of the Companies Act, 1994 are absolutely false, baseless and misconceived. The fact is, the petitioners being standing on their admitted position as the shareholders through private placement and not through IPO, hence they cannot take benefit under section 140(1), 140(2) and 145 of the Companies Act, 1994. The petitioners have no *locus standi* to file this Company Matter under the aforesaid section. As such, the application should be rejected summarily for ends of justice.
19. That the statements made in paragraph No. 19 describing the number of shares of the respondent company are also not correct; hence call for no comments.
20. That the statements made in paragraph Nos. 20 & 21 claiming that Tk. 4.00 (four) crore to be the outstanding debt owed to the petitioners by the respondent No. 1 are absolutely false, incorrect, misconceived and misleading; hence denied by the respondents. The fact is, the petitioners being claiming themselves as the shareholders in the company cannot be the creditors to the respondent No. 1 company; thus cannot invoke winding up of the respondent No. 1 company under section 141(v) read with section 142(a) of the Companies Act, 1994; hence the instant application is not maintainable in the eye of law.
21. That the fact is, the respondent No. 1 company with sincere intension to issue shares in the stock market appointed issue manager and underwriter who as a part of marketing process placed shares of the respondent No. 1 company at large. The petitioners at their own will, voluntarily and without any sort of influence purchased the shares from issue manager through private placement knowingly well that the respondent 1 has yet to get approval from the BSEC for issuing IPO through stock exchanges. The petitioners with the intention to gain more interest/profit purchased the shares for trading the same subsequently in the stock market. The respondent No. 1 company in compliance with all legal formalities applied for getting approval from the BSEC who has yet to approve the application for listing of the respondent No. 1 company. If the BSEC would have allowed/approval the listing of the respondent No. 1 company with the BSEC and stock exchanges, the respondent No. 1 could have traded stocks in the stock market by now. However, the respondent No. 1 is at no fault and the application for being listing with stock exchanges is still pending. This is an intervening cause making the respondent No. 1 company unable to

trade in the stock market. However, it is an admitted position by the petitioners that share certificates have been issued to them and they are the shareholders in the company.

22. That it is submitted that the petitioners being the shareholders of the respondent No. 1 company cannot claim themselves as the creditors to whom the respondent No. 1 is a debtor and unable to pay debts under section 241(v) read with 242 of the Companies Act, 1994. A shareholder is the owner of the rights and liabilities of the company, and a shareholder cannot claim himself as a creditor as meant under section 242 and 241(a) of the Act. As such, this application of the petitioner should be rejected summarily for ends of justice.
23. That it is submitted that the petitioners being not the IPO purchased shareholders and thereby purchasing shares directly from the issue manager cannot invoke jurisdiction under section 140(a), 140(b) and 145 of the Act. As such, this application of the petitioner is liable to be rejected for ends of justice.
24. That it is submitted that the petitioners have no *locus standi* to file this company matter since they are neither the prospectus issued shares as meant under section 140 and 145 nor the creditor to the Company as meant under section 241(v) and 242 of the Companies Act, 1994. Hence, the instant company matter is not maintainable, and the same is liable to be rejected summarily for ends of justice.
25. That it is submitted that the petitioners have made a very confusing double standard by seeking relief both under section 140 read with 145 and section 241(v) read with 242 of the Act, which is not maintainable at all. As such, the instant company matter is not maintainable in its present form and manner; and the same is liable to be rejected summarily for ends of justice.
26. That it is submitted that before filing of this company matter the petitioners did not serve any specific notice under section 241(1)(i) of the Act; hence the instant application under section 241(v) for winding up of the company in alternative way is not maintainable tenable in the eye of law. As such, the application of the petitioners is liable to be rejected summarily.
27. That it is submitted that the winding up of an Airlines Company is such a serious matter, extra-ordinary recourse and should not be taken as first recourse for recovering of a claim, if any where there are many other alternative ways for recovering the claim efficaciously. Leaving all other alternatives the petitioners have filed the instant application using undue benefit of section 241(V) of the Companies Act, 1994 as cunning device which is not sustainable in law. The petitioners have not strong prima facie case. Therefore, admission of this application of winding up of respondent No. 1 company will be highly prejudicial to the interest of other shareholders, its employees, customers and public at large. Hence, the application of the petitioners for winding up of the respondent No. 1 company is liable to be rejected summarily.
28. That the statements of facts made above are true to my knowledge and matters of record, which, I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(.....)
Advocate

DEPONENT
The deponent is known to me
identified by me.

Solemnly affirmed before me by the said at
the Supreme Court premises, Dhaka on this
the.....th day of,2016 at
.....A.M/P.M.

(.....)
Advocate
Membership No.
Hall Room No. 2, SCAB,
Ramna, Dhaka,
Mobile No.....

COMMISSIONER OF AFFIDAVIT
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

COMPANY MATTER NO. 15 OF 2018.

IN THE MATTER OF :

Bangladesh Bank.

..... Petitioner

—Versus—

Pretty Leasing and Financial Services Ltd. and others.

..... Respondents

AFFIDAVIT-IN-OPPOSITION ON BEHALF OF THE RESPONDENTS NOS. 4, 5 AND 6—

We, (1) Nasrin Jahan, daughter of Halim Mia and Mairum Begum, Date of Birth-, by
Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No.
....., (2) Jerin Bina, daughter of Halim Mia and Mairum Begum, Date of Birth-
....., by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National

ID No., (3) Mahbubur Rahman, son of daughter of Halim Mia and Mairum Begum, Date of Birth-, by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No., do hereby solemnly affirm as follows:—

1. That we are the respondent Nos. 4, 5 and 6 in this financial institution matter and we are well conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the Bangladesh Bank as petitioner filed this financial institution matter under section 29 of the Financial Institutions Act, 1993 for winding up of the respondent no. 1 company namely Pretty Leasing and Financial Services Limited (*shortly referred to as the 'PLFS'*). The matter was admitted by this Hon'ble Court vide order dated 14.07.2019. After coming into knowledge about this case, the respondent no. 4, 5 and 6 entered appearance by filing Vokatnama in this case through their learned Advocate. The learned Advocate collected a copy of the petition, application for injunction, application for conferring jurisdiction and application for appointment of provisional liquidator filed by the petitioner. Having gone through the same and reading the contents thereof we have decided to controvert the same and thereby being advised by our learned Advocate we are submitting this affidavit-in-opposition to the main application first on our behalf.
3. That the statements made in the petition which are not admitted specifically here are deemed to be denied by these deponent.
4. That the statements made in paragraph No. 1 introducing the standing of the petitioner bank are matters of records; hence call for no comments.
5. That the statements made in paragraph No. 2 so far stating about the respondent No. 1 and other respondents except the respondent Nos. 4-6 who are the instant deponents are matters of record; hence call for no comments. But the statements so far stating about the respondent Nos. 4-6 alleging that they obtained loan from the respondent No. 1 company by abusing their position as directors (ex-directors) and yet to pay of the same are absolutely incorrect, false and misconceived; hence denied by these deponents. It is pertinent to mention that there is no outstanding loan liability of the respondent Nos. 4-6 to the respondent No. 1 company.
6. That the statements made in paragraph Nos. 3 and 4 stating about the objectives of the respondent No. 1 company and its license and permissions from different authorities are matters of records, and the same call for no comments.
7. That the statements made in paragraph No. 5 regarding a special inspection conducted by the petitioner in the respondent No. 1 company and finding out that between 2004-2013 some directors in their own name or in the name of their relatives or associated persons/companies withdraw 358.54 crore of taka in disguise of loan are of no relevance to the instant deponents; hence denied by these deponents.
8. That the statements made in paragraph No. 6 regarding disbursement of loan of Tk. 20 crore to ABC Initiative Limited and Madona Holdings Limited, adjustment of loan by way of transfer of a piece of land, distribution of unadjusted value amongst the directors, subsequent transfer of land of 35 kathas, non returning of Tk. 11.412 crore, no interest pay

and other statements are incorrect and misconceived, hence denied by these deponents, because the loans in question have duly been repaid/ regularized and there is no outstanding to the instants deponents against any loan.

9. That the statements made in paragraph No. 7 alleging about the removal of these deponents from the post of directors of the respondent No. 1 company for swindling of money and other statements are not true; hence denied by these deponents. The fact is that they were removed from the post of directors on the ground that their numbers of shares did not qualify the required 2% as per the prevalent law and the same was made at the instant of the vested quarter.
10. That the statements made in paragraph Nos. 8 and 9 about the reconstruction of the respondent No. 1 company, involvement of former directors in siphoning money through various means, non recoverable damage done by the former directors and senior officials, high interest rate of deposit, appointment of chartered accountant company as external auditor, their report, unveiling the corruption, violation of law, looting money and all other statements are incorrect and misconceived; hence denied by these deponents. The fact is that before the reconstruction of the board the respondent No. 1 company was running well with the all satisfaction of its clients, creditors, debtors and the regulatory authorities. But what actually happened subsequently by the vested quarter is a complete surprise to the founder directors and shareholders of the respondent No. 1 company.
11. That the statements made in paragraph Nos. 10 and 11 about the contents of the report of the external auditors, overstating of sales and assets and understating the liabilities from 2005-2014, declaration of 75% stock dividend, selling the same at higher price at the cost of general investors and defrauding them, non recovery of the dismal financial condition of the respondent No. 1 company despite the reconstitution of its Board, failure to maintain CRR and SLR, and all other statements are misconceived and incorrect, hence denied by these deponents.
12. That the statements made in paragraph No. 12 about accepting the failure of maintaining CRR and SLR and paying fine thereof are matters of records, hence call for no comments.
13. That the statements made in paragraph No. 13 about receiving of complaints from the depositors, inability to pay the debts, and other statements are incorrect and misconceived; hence denied by these deponents.
14. That the statements made in paragraph No. 14 about the inability of the respondent No. 1 company to pay its debts which gives birth to the cause of auction under section 29 of the Financial Institutions Act, 1993 for the petitioner are absolutely misconceived and erroneous; hence denied by these deponents.
15. That the statements made in paragraph No. 15 stating about the reason of preventing the respondent Nos. 3 -13 to dispose off their assets otherwise they will transfer fund and launder the same and other statements are misconceived, erroneous and should not attract the respondent Nos. 4-6; as such these are denied by these deponents. Since, the respondent Nos. 4-6 have already repaid their loan amount to the respondent No. 1 company, therefore they should not bear any responsibility in the respondent No. 1 company.

16. That the statements made in paragraph No. 16 regarding the necessity for appointing a provisional liquidator are of no relevance; hence denied by these deponents.
17. That it is stated that the respondent Nos. 4, 5 and 6 have no involvement with the reduction of CRR and SLR of the respondent No. 1 company and there is no specific allegations against them. Moreover, there is no loan liability of them to the respondent No. 1 company. As such, preventing them from withdrawal of any money or security from the accounts maintained by them with any bank, financial institution, brokerage house, merchant bank, central depository, co-operative society or other similar institutions and also from disposal of any property or assets, movable or immovable is totally unfair and prejudicial to the interest of these deponents. The interim order of this Hon'ble Court to this effect is creating serious hardship for the respondent Nos. 4-6. They are not the existing directors of the respondent No. 1 company and they should be exonerated from the liability of the respondent No. 1 company.
18. That the fact of the respondent Nos. 4, 5 and 6 in short is that—
 - (a) The respondent Nos. 4 and 5, namely Ms. Nasrin Jahan and Ms. Jerin Bina are having no shares i.e. controlling interest in the respondent No. 1 company. For that reason they are shown as the “non controlling interest” in the respondent No. 1 company in its audit report for the year ended 31 December 2018 (page 375 of the main petition of the petitioner). On the other hand, the respondent No. 6, namely Mr. Mahbubur Rahman being one of the sponsor shareholders in the respondent No. 1 company is holding 62,31,031 (Sixty Two Lac Thirty One Thousand Thirty One) shares equivalent to 4.5% of the total shares of the respondent No. 1 company. They were the directors in the respondent No. 1 company for a long period of time, and in the year 2015 they were removed from the post of directors at the instance of a vested quarter in collusion with the petitioner Bangladesh Bank and after their removal a new Board of Directors was constituted which brought misfortune and loss to the respondent No. 1 company. After their removal, a drastic fall in share price and severe loss was caused due to the failure of the new management.
 - (b) It also appears from the said Audit Report, 2018 of the respondent No. 1 company (Annexure- “G” of the main petition) as well as the Management Audit Report prepared by HM Chowdhury & Co. (Annexure- “C” of the main petition) that there is no outstanding amount of loan or any claim against the respondent Nos. 4 and 5.
 - (c) However, it is mentioned in the said Management Audit Report that against the personal guarantee of the respondent No. 6 there was outstanding of loan amounting in BDT 184,68,56,780/- (Taka One Eighty Four Crore Sixty Eight Lac Fifty Six Thousand Seven Hundred and Eighty) only as on 30.09.2015 (page 133 of the main petition). But the fact is that all the related lease/loan liabilities of the respondent No. 6 (either against his personal guarantee or otherwise) with interest at the erstwhile rate was Tk. 124,52,23,754/- (Taka One Twenty Four Crore Fifty Two Lac Twenty Three Thousand Seven Hundred and Fifty Four) only; against which interest (suspense amount) amounting to Tk. 26,85,96,590/- (Taka Twenty Six Crore Eighty Five Lac Ninety Six Thousand Five Hundred and Ninety) only was waived and Net

Amount to be received was fixed at Tk. 97,66,27,164/- (Taka Ninety Seven Crore Sixty Six Lac Twenty Seven Thousand One Hundred and Sixty Four) only vide the final settlement sanction advice being PLFS/Credit(HO)-FS-SAG/2016/2177 dated 02.08.2016. Likewise, all the related margin loan liabilities of the respondent No. 6 (either against his personal guarantee or otherwise) with interest at the erstwhile rate was Tk. 58,51,09,270.16/- (Taka Fifty Eight Crore Fifty One Lac Nine Thousand Two Hundred Seventy and Sixteen Paisa); against which interest amounting to Tk. 3,51,09,270.16/- (Taka Three Crore Fifty One Lac Nine Thousand Two Hundred Seventy and Sixteen Paisa) was waived and Net Amount to be received was fixed at Tk. 55,00,00,000/- (Taka Fifty Five Crore) vide the final settlement sanction advice being PLFS/Credit(HO)-FS-SAG(share)/2016/2898 dated 22.09.2016. However, the Term Loan liability of the respondent No. 6 was rescheduled for the second time on 23.04.2018 revising the loan amount Tk. 68,06,59,408/- (Taka Sixty Eight Crore Six Lac Fifty Nine Thousand Four Hundred Eight) at rate 13% interest. It is again certified by the respondent No. 1 vide its letter dated 04.09.2018. Copies of the sanction advices dated 02.08.2016, 22.09.2016, 23.04.2018 and letter dated 04.09.2018 are annexed hereto and marked as Annexure- “Z”, “Z1”, “Z2” and “Z3”.

- (d) Subsequently the aforesaid outstanding amount of loan was adjusted by the proceeds of land in the account of respondent No. 1 company which is also admitted (though partially) by the petitioner (paragraph No. 6 of the main petition). After adjustment of the said loan duly the respondent No. 1 company also issued Certificate of No Liability in favor of the respondent No. 6 on 03.03.2019 in the following tune—

“This is to certify that Mahbubur Rahman, National I.D. no. 194 582 6367, S/O Lal Mia, Address: House # 18, Village/Road: 116/120, Gulshan – 1, PO: Gulshan – 1212, Gulshan, Dhaka City Corporation, Dhaka was a ‘Director’ of the company.

It is certified that a long pending and complicated land dispute of 66.5 katha land at 73, Green Road has been resolved with his best support for the greater interest of the company. PLFSL happily announces no claim against ‘Arafin Shamsul Alamin’ Past Director of the company from any and all consequences of the above Land matter. The full sale proceeds of Tk. 123,05,40,000.00 (One hundred twenty three crore five lacs and forty thousand) only, has already been adjusted with PLSFL and no Liability stands against the same issue and deemed to have been finally settled.

The certificate is provided for and on behalf of Pretty Leasing And Financial Services Ltd.”

The respondent No. 1 also updated its Form- XII with the RJSC office confirming the removal of the respondent No. 6 from the post of director vide letter dated 29.05.2019. Photocopies of the Certificate of No Liability dated 03.03.2019, Certificate dated 29.05.2019 and Form- 12 collected on 30.11.2015 are annexed hereto and marked as Annexure- “Z4”, “Z5” and “Z6”.

- (e) It is also pertinent to mention that the respondent No. 1 company duly issued No Liability Certificate in favor of the respondent No. 4 and 5. Photocopies of those certificates dated 04.09.2018 and 03.03.2019 are annexed hereto and marked as Annexure- Z7, Z8, Z9 and Z10.

- (f) Moreover, the repayment of loan by transferring property is not disputed by the petitioner. The only contention of the petitioner against the then directors, namely Monaem Hossain, Nasrin Jahan, Jerin Bina, Lal Mia, Md. Shamim Hossain, Akter Hossain and others that out of Tk. 123.05 Crore as owed to the respondent No. 1 Tk. 111.642 Crore was refunded/paid but Tk. 11.412 Crore is yet to return (paragraph No. 6 of the main petition). In this connection it is very pertinent to mention that ABC Initiative Limited and Madona Holdings Limited availed loan facilities of Tk. 20,00,00,000.00 (Taka twenty Crore) only from the respondent No. 1. Both ABC and Medona failed to make payment of their respective liabilities with the respondent No. 1. Thereafter, both the companies decided to adjust their liabilities by way of selling their immovable properties to the respondent No. 1. Accordingly Zenith Holdings Ltd. entered into an Agreement for Sale being No. 2210 dated 21.05.2014/22.05.2014, registered with the Sub-Registry Office, Tejgaon, Dhaka with the respondent No. 1 to sell land measuring 35.03 Katha equivalent to 57.805 decimal, situated within District Dhaka, P.S & Sub-Registry office Tejgaon, Mouza Tejturi Bazar. Prior to that ABC Initiative Limited and Madona Holdings Limited jointly entered into an Agreement for Sale with Pretty Leasing for Sale of the 31.50 Katha equivalents to 51.975 decimals of land situated within District Dhaka, P.S & Sub-Registry office Tejgaon, Mouza Tejturi Bazar. Due to lack of permission from the petitioner, the respondent No. 1 could not purchase the properties from Zenith and Zephyr. As a result their liabilities with the respondent No. 1 on increasing and remain unadjusted for the time being.
- (g) For the purpose of adjustment of the liabilities ABC Initiative Limited and Madona Holdings Limited and the respondent No.1 company jointly agreed to sell the aforesaid immovable properties to Birla International Ltd. To this effect Zenith Holdings Ltd. and Zephyr Holdings Ltd, both represented by their constituted attorney Paramount Properties Ltd. the respondent No. 1 company and Birla International Ltd entered into a Tripartite Agreement. It was agreed amongst the parties that the immovable properties would be sold at Tk. 115,00,00,000.00/- (Taka one hundred and fifteen crore) only and the rest amount of liabilities amounting to Tk. 8,05,40,000.00/- (Taka eight crore five lac and forty thousand) only was agreed to be paid by the other concerns of ABC Initiative Limited and Madona Holdings Limited. Accordingly, the immovable properties were sold to Lipro International Ltd who paid Tk. 115,00,00,000.00/- (Taka one hundred and fifteen crore) only and directly deposited the same to the account of respondent No. 1 company and the rest amount of liability amounting to Tk. 8,05,40,000.00 (Taka eight crore five lac and forty thousand) only was agreed to be paid by the concerned parties in terms of the Tripartite Agreement. Subsequently, the same was repaid duly. Copies of the said certificate dated 14.02.2019 and Tripartite Agreement dated 14.02.2019 are already in record before this Hon'ble Court, (Annexure- "C" series of the application dated 23.07.2019 of the respondent No. 7).

19. That it is stated when these deponents were forcefully ousted from the posts of directors of the respondent No. 1 company, at that time and also in the past period of time before then, the respondent No. 1 was a profitable and growing concerned subject to complains of all the relevant provisions of Las and concerned authorities. The respondent No. 6 is a sponsor share holder of the respondent No. 1 company. He is very much concerned with the existence, survivality, promotion and developments of the respondent No. 1 company. It is really painful for them to see that the respondent No. 1 company is now under subject of liquidation. The respondent No. 6 has never avoided any responsibility, rather even after his forceful removable from the post of director he continued to serve for the best interest of the respondent No. 1 company who also admitted in its No liability Certificate as stated earlier. There is no scope to deny that his active endeavour (though he was a mere guarantor) the respondent No. 1 company could recover the said loan. Under the circumstances, the respondent Nos. 4-6 should be exonerated from the allegation made by the petitioner in the main petition for ends of justice.
20. That the deponents crave leave of the Hon'ble Court to swear affidavit with photocopies of the annexures, original copies of which are remained with the office of the deponents who shall be bound to produce original copies as per order of this Hon'ble Court.
21. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate

Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
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SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

CHAPTER 20

Loan related requirements

Advancement of credit facility or loan has become one of main businesses of bank or financial institution now-a-days. While the entrepreneurs want capital, the creditors want to secure loan with securities as much as possible. The creditors need securities for reasonable assurance that in case of default in repayment of loan, they can take effective legal steps for recovering the loan either using the securities or by way of suit/case. Though loan can be created without security, the unsecured loan has already proven risky. For that reason, the regulatory policy is to secure the loan as much as possible. Bangladesh Bank provides several guidelines/directions to the schedule banks and financial institutions to take several securities for securing the loan/credit facility. These requirements are required for securing the loan. For that reason, these are shortly known as ‘security instruments’. These security documents are not the ‘securities’¹ which include the share, bond, etc. All these instruments are to be returned on repayment/adjustment of liability. These are not mere documents. These are the legal instruments which carry monetary value in the eye of law. All these instruments come with the sanction advice or sanction letter granting loan. When loan is secured with security, it is known as secured loan.² These securities are commonly addressed as the collateral securities.

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1. Section 2(a) of the Securities Act 1920 (a) states that “Government security” means promissory notes (including treasury bills), stock-certificates, bearer bonds and all other securities issued by the Government in respect of any loan contracted either before or after the passing of this Act, but does not include a currency-note.
Section 2(d) of the Securities and Exchange Commission, 1969 states that (d) “equity security” means any stock or transferable share (preferred or common) or similar security representing ownership; any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right itself; and such other security as may be prescribed.
Section 2(d) of the Securities and Exchange Commission, 1969 further states that “securities” means any of the following instruments issued or to be issued, by or for the benefit of a company, whether incorporated in Bangladesh or not, namely—
 - (i) any Government security as defined in the Securities Act, 1920 (X of 1920); and
 - (ii) other instruments creating a charge or lien on the assets of the company; and
 - (iii) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party, and includes any stock, transferable share, script, note, debenture, debentures stock, bond, investment contract, derivative, commodity futures contract, options contract, exchange-traded fund] and pre-organisation certificate or subscription, and, in general, any interest or instrument commonly known as a “security”; and, any certificate of deposit for, certificate of interest or participation in, temporary or interim certificate for, receipt for, or any warrant or right to subscribe to or purchase, any of the foregoing, but does not include currency or any note, draft, bill of exchange or banker’s acceptance or any note which has a maturity, at the time of issuance, or not more than twelve months, exclusive of days of grace, or any renewal thereof whose maturity is likewise limited.
 2. Section 5(ঙ) of the Bank Company Act 1991 states that “জামানতী ঋণ বা অগ্রিম” অর্থ সেই ঋণ বা অগ্রিম যাহা সম্পদের জামানত গ্রহণ করিয়া প্রদান করা হয় এবং বাংলাদেশ ব্যাংক কর্তৃক নির্ধারিত পদ্ধতিতে নির্ণীত উক্ত সম্পদের বাজার মূল্য কোন সময়েই ঋণের পরিমাণের চাইতে কম হয় না, এবং “অজামানতী ঋণ বা অগ্রিম” অর্থ সেই ঋণ বা অগ্রিম বা উহার ঐ অংশ যাহার বিপরীতে কোন জামানত গ্রহণ করা হয় না.

A loan in default presents the ultimate test of the quality of a lender's documentation practices. Loan documents are all that stand between charging off a loan or recovering against collateral and/or guarantors. The environment of a loan in default is highly adversarial. For this reason, loans must be documented to ensure the highest level of scrutiny to safeguard bank's interest as well as to withstand legal challenge. Lending process includes the following phases: application, investigation, evaluation, decision documentation, administration, and collection. All of these phases require some form of documentation in order to protect bank's interest. This part of the lending process is essential in order to avoid loan losses due to poor documentation. Many banks/NBFIs assign this important responsibility to loan officers and loan administrators. If not performed accurately, poor documentation can cause loans to be insecure or unguaranteed.³

Documents Check List for Advancement of Loan

These documents are the legal requirements for advancement of credit facility or loan by any bank or financial institution provided under the existing laws and policies. Generally, these are guided under the Bangladesh Bank Order 1972, Bank Company Act 1991, Financial Institutions Act 1993, other laws and rules thereunder. In addition, policies, guidelines, directives and circulars provided by the Bangladesh Bank time time govern this area largely. The following documents are the requirements, amongst others, now-a-days required—

- Demand Promissory Note (DP Note) which is also known as promissory note,⁴
- Letter of Arrangement,
- Letter of Continuity,
- Letter of Disbursement,⁵
- Letter of Revival,⁶
- Letter of Disclaimer (if applicable),⁷
- Letter of Installment,
- Personal Guarantees of the Proprietor,
- Personal Guarantees of the Directors,

3. Mohd. Jamil Hossain, 'Loan documentation: Security the prime concern', The Financial Express (online), 10 December 2019

<<https://thefinancialexpress.com.bd/views/loan-documentation-security-the-prime-concern-1575991334>> (accessed 27.05.2020).

4. Section 4 of the Negotiable Instruments Act 1881 states that a "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.
5. Though sanction advice is the letter of disbursement too, and generally in the sanction advice every details of security instruments along with loan amount, rate of interest, period and all other descriptions are given, however each security instrument carries its own value.
6. Revival letter is an acknowledgment of loan/credit facility/debt and confirmation of having executed security instrument without which law of limitation will set in if the documents are not revived (renewed) within a period of limitation of law. If the borrower does not revive the position regarding payment of loan and its installment, then the creditor will accrue the right to sue for recovery of loan.
7. By this instrument, the mortgagor or the security provider assures that in case of default in repayment of loan, the creditor will be able to use the security properties for selling out the same without any claim from the owner.

- Personal Guarantees of the Partners,
- Personal Guarantees of the Guarantor,
- Personal Guarantees of the Third Party,⁸
- Personal Guarantees of Spouse,⁹
- Personal Guarantees of Parents,¹⁰
- Letter of Hypothecation on the inventory, receivables, advance payments, plant & machineries etc.,¹¹
- Notarized IGPA in favor of the Bank to sell the hypothecated stocks and plant & machinery,¹²
- Loan Agreement covering usual covenants to be duly executed,¹³
- Letter of pledge,¹⁴
- Letter of lien,¹⁵
- Reference of minutes of Board Resolution of the company for availing credit facilities from bank/financial institution,¹⁶
- Reference of minutes of Board Resolution for execution of documents,
- An Undertaking not to change the management of the company and the memorandum and articles of the company without prior permission of bank/financial institution,¹⁷

8. Personal guarantee can be given by the third party who is neither the borrower nor the mortgagor. Third party can be anybody or any person, natural or artificial. A mortgagor can be a guarantor too. A borrower must give personal guarantee.
9. It is sometimes required when loan is borrowed by any person in his/her name.
10. It is also given when the creditor wants so.
11. It gives birth to an actionable claim under the Transfer of Property Act 1882. It is given against the plants, machineries, etc with the power of right to sell in case of default of repayment of loan.
12. It is given authorizing the creditor with the power to sell the hypothecated properties.
13. Loan agreement is to be executed between the creditor and the debtor detailing all the terms and conditions therein.
14. It is created in case of moveable properties i.e. goods, profits, sale proceeds, products, etc.
15. It is created over moveable properties like share, bond, etc.
16. Every loan should be approved by the Board of Directors of the bank/financial institutions. There should be a reference of the resolution approving the loan.
17. Mandatory requirement is that till repayment of loan the borrower (if it is a company/partnership firm/proprietary firm) cannot change its name or proprietorship or directorship or share holding position i.e. shareholding or ownership position of the borrower.

Section 27 of the Bank Company Act, 1991 states that

(১) কোন ব্যাংক-কোম্পানী,—

- (ক) উহার নিজস্ব শেয়ারকে জামানত হিসাবে রাখিয়া কোন ঋণ, অগ্রিম, গ্যারান্টি বা অন্য কোন আর্থিক সুবিধা প্রদান করিবে না;”
- (খ) ইহার কোন পরিচালককে “জামানতী ঋণ বা অগ্রিম” ব্যতীত অন্য কোনরূপ ঋণ বা অগ্রিম মঞ্জুর করিবে না বা ইহার কোন পরিচালক কর্তৃক দায় গ্রহণের ভিত্তিতে “জামানতী ঋণ বা অগ্রিম” ব্যতীত ঋণ, অগ্রিম, গ্যারান্টি বা অন্য কোন আর্থিক সুবিধা প্রদান করিবে না;
- (গ) বিনা জামানতে নিম্নবর্ণিত ব্যক্তি বা প্রতিষ্ঠানকে কোন ঋণ বা অগ্রিম মঞ্জুর করিবে না, অথবা এই সকল ব্যক্তি বা প্রতিষ্ঠান কর্তৃক দায় গ্রহণের ভিত্তিতে কোন ঋণ ও অগ্রিম প্রদান করিবে না,—
- (অ) ইহার কোন পরিচালকের পরিবারের কোন সদস্য;
- (আ) এমন কোন বাণিজ্য প্রতিষ্ঠান বা প্রাইভেট কোম্পানী যাহাতে উক্ত ব্যাংক-কোম্পানী বা উহার কোন পরিচালক বা উহার কোন পরিচালকের পরিবারের কোন সদস্য পরিচালক, মালিক বা অংশীদার রহিয়াছেন;
- (ই) এমন কোন পাবলিক লিমিটেড কোম্পানী, যাহা উক্ত ব্যাংক-কোম্পানী বা উহার কোন পরিচালক বা উহার কোন পরিচালকের পরিবারের কোন সদস্য কর্তৃক কোনভাবে নিয়ন্ত্রিত হয়, অথবা যাহাতে উক্ত ব্যক্তিদের এমন পরিমাণ শেয়ার থাকে যাহা দ্বারা তাহারা অনূন্য বিশ শতাংশ ভোটদান ক্ষমতার অধিকারী হন।

- Undated cheques,¹⁸
- Letter of authorization for encash of securities,
- Letter of authority to debit accounts,
- Lien and Set-Off over Deposit Accounts,
- Memorandum of deposit of cheques,
- Letter of lien and authority for advances against fixed deposits,
- In case of mortgaged property Lawyers opinion confirming no legal obligation to finance the client against the Property,¹⁹
- Valuation Certificate,
- Original purchase deed along with Bia deed(s),
- Non-encumbrance Certificate with search fee paid receipt,
- Bill payment receipts,
- Certified Mutation Khatian including mutation fee paid receipt (DCR),
- CS, SA, RS, BS Khatian(s), math porcha, etc.,
- Up to date rent paid/municipal tax paid receipt(s) etc.,
- Deed of Mortgage along with IGPA authorizing bank/financial institution to sell the properties without intervention,
- Personal Guarantees of the Mortgagor,
- Board Resolution if the property is in the name of limited company or partnership firm,
- Original Insurance Policy,

-
- (২) কোন ব্যাংক-কোম্পানী নিম্নবর্ণিত ক্ষেত্রে, সংশ্লিষ্ট পরিচালক ব্যতীত অন্যান্য পরিচালকগণের সংখ্যাগরিষ্ঠের অনুমোদন ব্যতিরেকে, কোন ঋণ, অগ্রিম, গ্যারান্টি বা অন্য কোন আর্থিক সুবিধা প্রদান করিবে না,—
- (ক) উহার কোন পরিচালক, বা
- (খ) এমন কোন ব্যক্তি, বাগিজ্য-প্রতিষ্ঠান, কোন কোম্পানী, যাহার সহিত বা যাহাতে উক্ত ব্যাংক-কোম্পানীর কোন পরিচালক-অংশীদার, পরিচালক বা জামীনদাতা হিসাবে স্বার্থ সংশ্লিষ্ট রহিয়াছে।
ব্যখ্যা : এই ধারায় ‘পরিচালক’ বলিতে পরিচালকের স্ত্রী, স্বামী, পিতা, মাতা, পুত্র, কন্যা, ভাই, বোন, এবং ঐ পরিচালকের উপর নির্ভরশীল সকলকে বুঝাইবে।
- (৩) ব্যাংক কোম্পানী (সংশোধন) আইন, ২০০৩ (২০০৩ সনের ১১ নং আইন) এর ১৯ ধারাবলে বিলুপ্ত।
- (৪) প্রত্যেক ব্যাংক-কোম্পানীর ব্যবস্থাপনা পরিচালক, প্রত্যেক মাস শেষ হওয়ার পূর্বে, উহার পূর্ববর্তী মাসের একটি বিবরণী বিধিদ্বারা নির্ধারিত ফরমে ও পদ্ধতিতে, বাংলাদেশ ব্যাংকের নিকট দাখিল করিবে, এবং উক্ত বিবরণীতে নিম্নবর্ণিত বিষয়সমূহের উল্লেখ থাকিবে,—
- (ক) এমন কোন প্রাইভেট বা পাবলিক কোম্পানীকে মঞ্জুরীকৃত ঋণ বা অগ্রিম যাহাতে ব্যাংক-কোম্পানীটি বা উহার কোন পরিচালক উক্ত কোম্পানীর পরিচালক হিসাবে স্বার্থ সংশ্লিষ্ট রহিয়াছেন; এবং
- (খ) এমন পাবলিক কোম্পানীকে মঞ্জুরীকৃত ঋণ বা অগ্রিম যাহাতে ব্যাংক-কোম্পানীটি বা উহার কোন পরিচালক ব্যবস্থাপনা প্রতিনিধি বা জামীনদার হিসাবে স্বার্থ সংশ্লিষ্ট রহিয়াছেন।
- (৫) উপ-ধারা (৪) এর অধীন দাখিলকৃত কোন বিবরণী পরীতগাম্ভে যদি বাংলাদেশ ব্যাংকের নিকট ইহা প্রতীয়মান হয় যে, উক্ত ব্যাংক-কোম্পানী উহার আমানতকারীগণের স্বার্থ হানি করিয়া উক্ত উপ-ধারায় উল্লিখিত কোন ঋণ বা অগ্রিম প্রদান করিয়াছে, তাহা হইলে বাংলাদেশ ব্যাংক লিখিত আদেশ দ্বারা এই প্রকার আর কোন ঋণ বা অগ্রিম প্রদান না করার জন্য উক্ত ব্যাংক-কোম্পানীকে নির্দেশ দিতে পারিবে এবং অনুরূপ ঋণ বা অগ্রিম প্রদানের উপর বাধা-নিষেধ আরোপ করিতে পারিবে, এবং উক্ত আদেশে নির্ধারিত সময়ের মধ্যে এই প্রকার প্রদত্ত ঋণ ও অগ্রিম আদায় নিশ্চিত করিবার জন্যও উক্ত ব্যাংক-কোম্পানীকে নির্দেশ দিতে পারিবে।

Section 27Ka of the Bank Company Act, 1991 states that আপাততঃ বলবত্ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, ঋণদাতা ব্যাংক বা আর্থিক প্রতিষ্ঠানের ঋণ বা বিনিয়োগ অনুমোদনকারী কর্তৃপক্ষের একস্তর উর্দ্ধতন কর্তৃপক্ষের অনুমোদন ব্যতীত কোন দেনাদার কোম্পানীর কোন পরিচালকের পদত্যাগ কার্যকর হইবে না এবং কোন পরিচালক তাঁহার শেয়ার হস্তান্তর বা বিক্রয় করিতে পারিবেন না।

18. Section 6 of the Negotiable Instruments Act 1881 states that a “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Cheque (undated/post-dated) can be taken as collateral security against loan.
19. Legal opinion is to be collected from the lawyer confirming the legality of the chain of title and other clearance regarding the loan to be mortgaged against the loan.

- In case of forced loan against LC/LCAF, the copies of LC and delivery documents including Bill of Lading and others,
- Collection of No Objection Certificate from Bangladesh Bank,
- Clean CIB Report to be collected (Credit Information Bureau Report regarding loan defaulting record of the borrower),
- Sanction Advice to be accepted,
- Other instrument(s) which can be used as security.

These securities can be continuous or periodical. All these securities may continue till full repayment of loan which may include the reschedulement or restructure or otherwise settlement of loan. Generally, securities continue to secure the entire loan till final adjustment of loan unless otherwise settled between the parties following the due process of law.

Sample²⁰

DEMAND PROMISSORY NOTE	
Taka. _____	Date. _____
<p>On Demand I/We _____ promise to pay to the Swadesh Bank Limited or its order on demand the sum of Taka (in number) _____ (in words) _____ together with interest at the rate of _____ % (in word Percent) per annum or as revised from time to time with monthly / quarterly rests for value received.</p>	
<p>_____ Signature</p>	

Sample

Date : _____ Swadesh Bank Limited _____ Branch	
LETTER OF ARRANGEMENT	
Dear Sir(s)/ Madam(s), Ref: Loan/Cash limit of Tk _____ (Taka _____) only granted in favour of _____ at _____.	

20. Samples of this Chapter can match with different formats used by different banks or financial institutions available in internet or otherwise. The samples given here are only to have some basic understanding about the documents used for the purpose of securing the loan.

With reference to the above limit granted in our favour for which I/we have executed a Demand Promissory Note and other necessary documents on this day, I/we hereby acknowledge your right to cancel the facility at any time with or without intimation to us.

In the event of the facility being cancelled by you, I/we undertake to pay to you all dues together with all other charges due by me/us immediately on demand.

If this agreement is signed or otherwise executed by or on behalf of more than one party, the obligation and the liability of such parties shall be deemed to be joint and several unless expressly stated to the contrary.

It is also understood that any word appearing in the singular will also apply for the plural and vice versa.

IN WITNESS whereof we executed these presents on the day, month and year first hereinabove written.

Authorised Signature

Authorised Signature

Witness

Witness

1.

1.

Name:

Name:

Address

Address:

Sample

Date : _____

Swadesh Bank Limited

_____ Branch

LETTER OF REVIVAL

Dear Sir(s)/ Madam(s),

Ref: Loan/Cash limit of Tk _____ (Taka _____) only granted in favour of _____ at _____.

With reference to the above limit granted in our favour for which I/we have executed a Demand Promissory Note and other necessary documents on this day, I/we hereby acknowledge your right to cancel the facility at any time with or without intimation to us.

In the event of the facility being cancelled by you, I/we undertake to pay to you all dues together with all other charges due by me/us immediately on demand.

If this agreement is signed or otherwise executed by or on behalf of more than one party, the obligation and the liability of such parties shall be deemed to be joint and several unless expressly stated to the contrary.

It is also understood that any word appearing in the singular will also apply for the plural and vice versa.

IN WITNESS whereof we executed these presents on the day, month and year first hereinabove written.

Authorised Signature

Authorised Signature

Witness

Witness

1.

1.

Name:

Name:

Address

Address:

Sample

LETTER OF CONTINUATION

Date: _____

ThThe Manager
SwSwadesh Bank Limited
_____Branch

De Dear Sir,

I / We beg to enclose a Demand Promissory Note for Taka_____ (Taka_____) only, signed by me / us _____ or In my / our behalf and endorsed over to pay by me / us and which is given to you as security for the repayment of credit facility which is at present outstanding in my / our name or in the name of _____ and also for the repayment of any credit facility to the extent of (Taka_____) only along with the interest which I / we may avail of hereafter and the said Promissory Note is to be a security to you for the repayment of the ultimate balance or sum remaining unpaid on the credit facility and I / we am / are to remain liable on the Promissory Note, notwithstanding the fact that by payments made into the account of my/us from time to time the credit facility may, from time to time be reduced or extinguished or even that the balance of the said account may be at credit.

It is agreed and understood that you are at liberty to take such steps as you consider expedient in order to enforce payment of the Promissory Note at any time after your notice demanding payment has been posted or otherwise transmitted and default is made in making payments within 3 days after posting or transmitting such notice, and that this guarantee shall apply to any other Promissory Note that may be given by me/us in renewal or substitution of the original.

Yours faithfully,

Signature

Sample

Date : _____ Swadesh Bank Limited _____ Branch	
LETTER OF DISBURSEMENT	
Dear Sir(s)/ Madam(s), Ref : SMART Cash Credit/SMART Term Loan for Tk. _____ (Taka _____) only With reference to the above loan availed by me/our organization _____ in respect of which I/we have signed a Demand Promissory Note for Tk _____ (Taka _____) only, Please disburse Tk. _____ (Taka _____) only	
_____ Authorized Signature	_____ Authorized Signature

Sample

LETTER OF DISCLAIMER	
The Manager Swadesh Bank Limited _____ Branch	Date. _____
Dear Sir(s)/Madam(s), Ref: Term loan All owed to AC : _____ With reference to the above, I/we _____ hereby confirm and place on record that the stock of goods and machineries stored in the premises at, is occupied by. I have and will have no interest/right/title on the declared goods/machineries and/or that which may be stored/installed therein from time to time. I confirm that this instrument will remain in full force till such time the facilities given by Swadesh Bank Ltd. are being enjoyed by	

Mr./Mrs./M/S _____ at and till I/We receive a revocation of such right in writing from you.	
urs faithfully,	
_____ Authorized Signature	_____ Authorized Signature
Name Father's/Husband's Name: Present Address: Permanent Address: Signed in presence of 1. Name: Address:	Name: Father's/Husband's Name: Present Address: Permanent Address: Signed in presence of 1. Name: Address:

Sample

Date : _____ Swadesh Bank Limited _____ Branch	
LETTER OF INSTALLMENT	
Dear Sir(s)/Madam(s),	
Ref: Medium/Short Term Loan for Tk. _____ (Taka _____) only granted in favour of _____ at _____.	
With reference to the Term loan of Tk _____ (Taka _____) only sanctioned by you in the name of _____ I/we hereby undertake to pay monthly installments of Tk _____ (Taka _____) only as per terms of the sanction advice towards adjustment of the said loan.	
I have clearly understood that amount of loan outstanding against' the aforesaid loan sanctioned by you may be recalled at any time giving due notice if installments are not paid regularly by me in accordance with this undertaking.	
_____ Authorized Signature	_____ Authorized Signature

Sample

Date : _____
 Swadesh Bank Limited
 _____ Branch

AUTHORISATION TO ENCASH SECURITIES

Dear Sir / Madam,

You are hereby authorised to encase the following securities purchased in my / our name(s) and held by you as security to liquidate the outstanding amount of the loan / overdraft facility granted to _____ as and when required.

Details of Security

Type	SL NO.	Issuing Office	Reg. No.	Face Value	Security Holder's Nam

Yours faithfully,

Signature(s) of the security holder(s)

Sample

LETTER OF AUTHORITY TO DEBIT ACCOUNT

Date : _____
 Swadesh Bank Limited
 _____ Branch

Dear Sir/Madam,

**Re: Letter of Authority to debit my / our
 Account No. _____ with your Bank.**

Inconsideration of granting me/us a credit facility, I/we hereby irrevocably authorize the Bank to debit my/our above Account No. _____ in _____ consecutive monthly installments as on 1 / 7 / 15 / _____ or following working day of each month commencing from the next month of disbursement of the loan.

I/We do further authorize you irrevocably to debit my/our above mentioned account for any sum that you may deem necessary for partial/ full adjustment of all outstanding dues and liabilities of myself/ourselves, if any, with your Bank.

Yours faithfully,

Signature

Sample

IRREVOCABLE LETTER OF AUTHORITY

Date. _____

The Manager

Swadesh Bank Limited

_____ Branch

Dear Sir / Madam,

In consideration of the Bank's granting me/us a credit facility of an aggregate amount of Tk. _____ (Taka _____) only (the 'Facility') vide the _____ dated _____ issued by the Bank and accepted by me /us, I do hereby deliver to the Bank the following undated cheques/securities :

Account No.	Cheque No.	Amount

In case of my/our failure to repay 3 (three) or more consecutive installments and or demand by the Bank as appropriate, I unconditionally and irrevocably authorise the Bank without any further intimation to me to put such dates on the said documents. The Bank may fill any date in the blank dated cheques and I shall not raise any objection to or question any of the dates filled in by the Bank for the due execution/encashment of such cheques. After encashment of the cheque and adjustment of the loan liability, residual balance, if any to be credited to my/our loan link account.

I/we understand that the cheques will automatically be deemed to be null and void once the loan is fully liquidated.

(PLEASE FILL IN IF SECURITY HAS BEEN PROVIDED AGAINST THE FACILITY)

I have executed and/or delivered and/or pledge the following securities to the Bank, duly discharged by me in your favour for the purpose of securing the Facility granted to me. I also

hereby irrevocably and unconditionally authorize the Bank to date and/or encash and/or enforce such security without any further intimation or reference to me.

Type and details of the security provided:

Security Details:

Type	SL NO.	Issuing Office	Reg. No.	Face Value	Security Holder's Name

This Letter of Authority shall be irrevocable until I/we adjust our liabilities under the Facility with the Bank in full to the satisfaction of the Bank and until the Bank expressly releases us from my/our obligation.

Signature

Signature

Witness:

Name:

Address:

Sample

IRREVOCABLE LETTER OF AUTHORITY

Date. _____

The Manager

Swadesh Bank Limited

_____ Branch

Dear Sir / Madam,

In consideration of the Bank's granting me/us a credit facility of an aggregate amount of Tk. _____ (Taka _____) only (the 'Facility') vide the _____ dated _____ issued by the Bank and accepted by me /us, I do hereby deliver to the Bank the following undated cheques/securities :

Account No.	Cheque No.	Amount

In case of my/our failure to repay 3 (three) or more consecutive installments and or demand by the Bank as appropriate, I unconditionally and irrevocably authorise the Bank without any further intimation to me to put such dates on the said documents. The Bank may fill any date in

the blank dated cheques and I shall not raise any objection to or question any of the dates filled in by the Bank for the due execution/encashment of such cheques. After encashment of the cheque and adjustment of the loan liability, residual balance, if any to be credited to my/our loan link account.

I/we understand that the cheques will automatically be deemed to be null and void once the loan is fully liquidated.

(PLEASE FILL IN IF SECURITY HAS BEEN PROVIDED AGAINST THE FACILITY)

I have executed and/or delivered and/or pledge the following securities to the Bank, duly discharged by me in your favour for the purpose of securing the Facility granted to me. I also hereby irrevocably and unconditionally authorize the Bank to date and/or encash and/or enforce such security without any further intimation or reference to me.

Type and details of the security provided:

Security Details:

Type	SL NO.	Issuing Office	Reg. No.	Face Value	Security Holder's Name

This Letter of Authority shall be irrevocable until I/we adjust our liabilities under the Facility with the Bank in full to the satisfaction of the Bank and until the Bank expressly releases us from my/our obligation.

Signature

Signature

Witness:

Name:

Address:

Date. _____

The Manager

Swadesh Bank Limited

_____ Branch

Sample

GENERAL TERM LOAN AGREEMENT

Dear Sir (s) / Madam(s),

In consideration of making or continuing advance or otherwise giving credit or providing finance to us by Swadesh Bank Limited, hereinafter refer to as 'the Bank' (which expression shall, where the context so admits, include its successors and assigns) under one or more modes of

finance or otherwise affording (hereinafter Collectively referred to as “Loan”) up to of Tk_____ (Taka_____) only, I/we, _____ at_____ hereinafter referred to as the “Borrower”(which expression shall, where the context so admits, include its/ their / his / her successors and assigns). HEREBY AGREE, UNDERTAKE, WARRANT, ASSURE AND COVENANT AS FOLLOWS:

1. Loans Defined : the term “Loans” as used herein shall include any and all indebtedness, obligations and liabilities on any kind of the Borrower (or of any partnership, syndicate, association, joint venture or other group of which the Borrower is a member) in which the Bank shall have interest, now or hereafter existing, whether or not represented by notes, bonds, debentures, drafts, or other evidence of indebtedness, whether arising out of loans, advances on open account, letters of credit, overdraft, contract or by operation of law or otherwise whether absolute or contingent, joint or several, secured or unsecured, due or not due, direct or indirect, liquidated or unliquidated and whether incurred by the Borrower as principal, surety, endorser, guarantor or otherwise.
2. Security : The term “Security” as used herein shall include all present and future credit balances of the Borrower in any currency with the Bank, all monies, negotiable instruments, commercial papers, notes, bonds, shares, debentures or other securities, bills of lading, airway bills, railway and truck receipts, warehouse receipts, insurance policies, claims, demands and any interest thereon, and any property represented by any of the foregoing and any other property, rights and interests of the Borrower, and any evidence thereof, which have been or at any time shall be delivered to or otherwise come into the possession of the Bank, its custody or control or be in transit to or from or allocated to the Bank for any purpose, whether or not accepted.
3. Pledge : As Security for the Loans, the Borrower hereby pledges to the Bank all of the Security and gives to it general lien upon, and a right to set-off, all rights, title and interest of the Borrower in and to any of the Security.
4. General Rights in Security: Security: On the occurrence of any event of default, the Bank may at its option, without notice and without incurring any liability and without discharging or otherwise affecting any liability of the Borrower thereon :
 - (a) exercise any or all powers with respect to any Security with the same force and effect and in the manner as an absolute owner thereof;
 - (b) transfer any Security to the name of the Bank;
 - (c) exercise all voting powers;
 - (d) remove or have removed any Security from any state or country to any other state or country;
 - (e) pledge any obligations issued or guaranteed by the Government of Bangladesh or any local authority which comprises the Security either alone or mingled with other collateral, to the Bangladesh Bank or any other authority in Bangladesh to secure deposits or other obligations of the Bank whether or not in excess of the Loans to the Borrower by the Bank.

- (f) demand and receive all payments and distributions of any Security (including principal, premium, interest, dividend or other income, share dividends and rights to subscribe);
 - (g) the Bank may act on behalf of the Borrower in its name or in the name of anyone for whom it has acted or shall act as agent, demand, sue for, collect and receive any Monies, securities or other property at any time due, payable or receivable on account of or in exchange for any Security, or make any compromise or settlement deemed desirable with respect thereto;
 - (h) sell any Security which constitutes an obligation for the payment of money, in any manner hereinafter provided, or extend the time of payment of any such Security, arrange for payment of any such Security in installments, or otherwise modify the terms thereof as to any other Party thereon;
 - (i) apply the net cash proceeds of any Security, whether principal or interest, to the principal and interest if any payable on any loan, or to continue to hold such proceeds as Security;
 - (j) surrender or release any Security to the Borrower, or exchange any Security for another Security provided by the Borrower.
5. Bank's obligations as to Security: The Bank shall be under no obligation to send notices, perform service or take any action of any kind in connection with the management of the Security. The Bank shall have no responsibility or liability for the form, sufficiency, accuracy, genuineness or legal effect of any Security or any instrument in any way relating thereto or any signature thereon, or any instrument representing or purporting to represent property or goods, or for the performance of any obligation of carriage, storage, insurance or otherwise, or for the consequences of any error, interruption, delay, mutilation or loss in transit of cables, telegrams, letters or other documents, or errors in translation or interpretation, or for obligations imposed by laws, customs or regulations or any state or country, or for the acts or decisions of Public Authorities, or strikes, lockouts, riots, wars, acts of God, or other causes beyond the control of the Bank, or for the act or failure to act by any of the Bank's correspondents.
6. Insurance: The Borrower will at its own expense at all times keep full insured with reputable insurance companies acceptable to the Bank all tangible property constituting a part of the security, against loss by fire or any other risks to which said property may be subject, and will deposit with the Bank copies of the policies or certificate thereof in such form as the Bank shall approve. The Borrower shall make the Bank sole beneficiary to such policies until full repayment of the loan. If the Borrower shall fail to do so, the Bank may maintain such insurance and the expense thereof shall be an additional liability of the Borrower.
7. Additional Security: The Borrower will, upon demand of the Bank at any time or from time to time, furnish such further Security or make such payment on account as will be satisfactory to the Bank.

8. Acceleration of Maturity : The Bank, at its own discretion, may decide to accelerate the date of maturity of the Loans, in the event that
- (a) the Borrower fails to furnish further Security or make payment as required in the previous paragraph; or
 - (b) any sum becoming due and unpaid by the Borrower within 7 days of becoming due; or
 - (c) the Borrower shall fail to perform any terms and conditions herein contained; or
 - (d) the premium relative to any policy of insurance constituting a part of the Security is not paid when due, or such premium if paid by the operation of provision in any such policy for automatic premium loans by the insurer with or without the consent of the Bank ; or
 - (e) the Borrower (1) die (2) becomes insolvent (however evident), (3) commits any act of insolvency, (4) defaults in any payment on any indebtedness or in the performance of any instrument relating to any defaults in any payment on any indebtedness or in the performance of any instrument relating to any defaults indebtedness, (5) makes a general assignment for the benefit of creditors, (6) suspends the operation of the Borrower's business (7) is expelled or suspended from any exchange or trade association, (8) admits in writing the inability of the Borrower's debts generally as they become due; or
 - (f) any petition in bankruptcy or insolvency or for a reorganization, composition, extension of the appointment of a receiver or other relief under any law relating to bankruptcy, insolvency, the relief of debtors or the liquidation or adjustment of indebtedness is filed by or against the Borrower or the property of the Borrower; or
 - (g) the Borrower, being a corporation, a resolution, for its winding up is passed or an order is made for its winding up; or
 - (h) any warrant, order of attachment, tax lien or levy, restraint or garnishment or sequestration be issued against any of the property of the Borrower by any receiver, court or governmental authority to take possession or control of any substantial part of such property or control over the affairs and obligations of the Borrower; or
 - (i) any of the events described in subdivisions (e) through (h) above shall occur (1) with respect to any maker; obligor, endorser, guarantor, surety issuer or other person liable, upon or for any loan or Security or any partnership of which the Borrower or any such person may now or then be a member, (2) with respect to the property of any such person or partnership, then and in any such event, all (2) with respect to the property of any such person or partnership, then and in any such event, all Loans shall be due and payable forthwith without presentation or demand for payment which are hereby expressly waived and thereafter all Loans shall bear interest at the legal rate (if higher than the rate then applicable thereto), provided however, that the Bank its sole discretion may by notice in writing waive, suspend or modify the effect on any such event upon any loan either before or after the same shall have occurred.

9. **Realization on Security:** Upon non-payment of interest or non-payment of principal on any loan which due or becoming due as above provided, the bank may without demand of payment or notice of intention, enforce, collect and realize the dues by sale of the Security, assignment, set off, application and otherwise. Any such sale, assignment, or other realization may be at any time and place public or private with or without advertisement or notice of the time or place or otherwise (all of which are waived), in one or more sale(s) or purchase(s) at such price or prices as the Bank may deem best, for cash or on credit or future delivery, without assumption of any credit risk, The Bank may be a purchaser at any such sale, and each purchaser of any Security so sold (including the Bank may be a purchaser at any such sale, and each purchaser of any Security so sold (including the Bank) shall hold the same absolutely free from any claim or right of any kind or equity or redemption of the Borrower, which are hereby waived and released.
10. **Expenses:** The Borrower will pay all expenses (including legal fees of every kind) of or incidental to the enforcement of any of the provisions hereof or of any of the Loans or of any actual or attempted sale or of any exchange, enforcement, collection or settlement of the Security and of the receipt of the proceeds thereof, and of the care of the Security (including insurance), and any such expense incurred by the Bank shall be added to the amounts due on all Loans and the Bank shall be entitled to all of the benefits thereof.
11. **Liability for Unpaid Balance, Return of Security:** Notwithstanding the return of Security or realization by the Bank upon entire Security or the retention by the Bank of any Security, regardless of its value, the Borrower shall remain liable for the unpaid balance of all loans, together with interest thereon till the date of payment. After all Loans (including expenses, charges, interest premium, and other sums included therein) have been paid in full, any Security remaining and the remaining proceeds of any Security shall be returned to the Borrower.
12. **Rights Cumulative, No waiver:** The rights and remedies herein expressly specified are cumulative and non- exclusive of any which the Bank would otherwise have, but it is not intended that any right or remedy be exercised in any jurisdiction in which such exercise would be specifically prohibited by law. No delay by the Bank in exercising any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any further exercise of any other right. The Bank shall not be liable for exercising or failing to exercise any power or right.
13. **Waiver of Presentment:** The Borrower hereby waives presentment (except for acceptance when necessary), protest, whether upon inception, maturity, acceleration of maturity or otherwise and any or all other notice and demand whatsoever, whether or not relating to such instruments.
14. **Amendment:** This Agreement shall not be amended, modified or limited except by a written agreement expressly setting out the amendment, modification or limitation and signed by the party against which such amendment, modification or limitation is to be effective. This Agreement shall supersede any inconsistent inconsistent provisions of any custody agreement hereinbefore executed.

15. **Payment:** Unless otherwise agreed, all Loans hereto before or hereafter obtained from or through the Bank by the Borrower shall be repayable on demand at the branch of the Bank at which the Loan was made available to the Borrower.
16. **Notices:** Service of Process demands for additional Security and any other demands or notice to the undersigned made by telephone or in writing left at or telegraphed or mailed to the address as the Borrower may furnish in writing, shall be as effective as if delivered in person. The Borrower consents to the commencement of any action and the service of any process at any place where the Borrower resides or conducts business or has any Borrower.
17. **Participations:** The Bank may act hereunder or with respect to any Loan or Security, on behalf of or as agent for any principal or participant, and may grant participation, in or assign any Loan, may grant participation in or assign this agreement and transfer any Security to any such principal, participant in or assignee of any Loan, In any such case, the term "Bank" as used herein shall include all such principals, participants and assignees, each of whom shall have all the benefits of this agreement as if named herein. The Bank shall continue to have the benefits hereof if it retains any interest in any Loan or Security but shall be fully discharged from all claims and responsibility from any Security so transferred. The Bank may in its discretion exercise all of the rights herein granted without the consent of or notice to any principal, participant, or assignee, for any such action. The term "Bank" as used herein shall also include any agent or nominee or the Bank and each agent or nominee shall also have the benefits of this agreement as if named herein.
18. **Parties:** If more than one person signs this Agreement, they will be jointly and severally liable hereunder, the term "Borrower" will refer to all such person collectively, and the provisions hereof regarding the Loans or Security will apply to any Loan or any Security of any or all of such persons, but the Bank will be authorized to deal hereunder with anyone or more such persons. This Agreement will be binding upon the heirs, executors, administrators, successors, or assigns of each Borrower.
19. **Continuing Agreement:** This agreement shall apply to all existing and future transactions, whether or not of the character contemplated at the date hereof, and if all transactions between the Bank and the Borrower shall at any time or times be closed, this agreement shall be applicable to any new transaction thereafter. The acceptances of this agreement shall not be deemed a commitment by the Bank to make any new Loan or extend any fresh credits in the future.
20. **Miscellaneous:** The Borrower will furnish financial statements yearly and will give prompt notice (30 days in advance when possible) of any bulk sale of assets or change in management, control or business policies or any meeting of creditors or any judgment against the Borrower or any event that may be detrimental to the rights and interests of creditors or any judgment against the Borrower or any event that may be detrimental to the rights and interests of the Bank or any event mentioned hereinbefore and will provide additional information and will permit inspection of books and records on request.

If this agreement is signed or otherwise executed by or on behalf of more than one party, the obligations and the liabilities of such parties shall be deemed to be joint and several unless expressly to the contrary.

It is also understood that any word appearing in the singular will also apply for the plural and vice versa. This agreement is to be construed according to the laws of Bangladesh.

The subject-headings of this agreement are for the purpose of convenience only and shall not effect the construction or interpretation of any of its provisions.

IN WITNESS whereof we executed these presents on the day, month and year first hereinabove written.

Authorised Signature

Authorised Signature

Witness

1. _____

Name:

Address

Witness

1. _____

Name:

Address:

Sample

Date_____

Swadesh Bank Limited

_____Branch

LETTER OF HYPOTHECATION

Dear Sir(s) Madam(s)

In consideration of Swadesh Bank Limited, a scheduled bank incorporated under the Companies Act, 1994 and governed by the Bank Companies Act, 1991; having its Head Office at 195, Motijheel Commercial Area, Dhaka-1000, Bangladesh; hereinafter referred to as the “Bank” (which expression shall, where the context so admits, include its successors and assigns) making or continuing advances or otherwise giving credit or providing finance to Borrower under one or more modes of finance or otherwise affording any other banking facilities or other accommodation of any kind, hereinafter collectively referred to as the “Credit Facilities”, up to a limit of Tk _____(Taka_____) only, for so long as the Bank may think fit, I/we,_____ Address: _____ Hereinafter referred to as the “Borrower”

DO HEREBY AGREE, UNDERTAKE AND COVENANT AS FOLLOWS:

1. The Borrower hereby hypothecate in favor of the Bank all of the Borrower's stocks, goods and moveable properties and assets and such other stocks, goods and moveable properties and assets as may hereafter be imported or otherwise acquired together with the benefit of all rights relating thereto, whether now or hereafter belonging to the Borrower and wherever now or hereafter situated including goods in the course of transit and all documents of title thereto and all proceeds thereof; all its present and future book debts, outstanding Monies, receivables, claims, bills, contracts, investments, securities, rights and assets whatsoever; all its plant and machineries, spare parts, accessories, equipments, all other movable properties and assets described in the Schedule hereto and such other Machineries as may hereinafter be imported or otherwise acquired by Borrower, whether the same are installed or not or lying loose or whether held by any party to our order and disposition and any other equipment and machineries in course of transit, all of which are hereinafter called "Hypothecated Property", with the benefit of all rights relating thereto, as security for the repayment by Borrower of the Credit Facilities, on demand of all Monies at any time payable by Borrower to Bank in respect of the Credit Facilities and of all our indebtedness or liabilities to the Bank in respect of any loan, credit, advance, overdraft, bills of exchange, promissory note or instrument at any time drawn, accepted or endorsed by Borrower solely or jointly with any other which the Bank may discount or become interested in together, and all other dues, commissions, costs, charges and expenses incidental thereto, that may be payable to the Bank or be incurred by the Bank in terms of the Credit Facilities.
2. The Hypothecated Properties shall be continuing Security by way of first charge in favour of the bank and the Borrower/(s) hereby confirms that no other encumbrance(s) of any kind is or has been or shall be created by the Borrower/(s) or anyone claiming from the Borrower/(s) affect the Hypothecated Properties or any part thereof.
3. The Hypothecated Properties shall be continuing Security for the due payment by the Borrower/(s) to the Bank at any time upon demand by the bank of all sums of money due or which may hereafter become due from the Borrower/(s) to the Bank in respect of the Credit Facilities including any Monies payable under any account of the Borrower/(s) with the Bank under any agreement(s) or instruments(s) executed or to be executed from time to time by the Borrower/(s) with or in favour of the Bank, whether accrued, accruing or contingent and whether solely or jointly with another or other and the amount of all charges and expenses which the Bank may have paid or incurred or become liable for in any way in connection with the Hypothecated Properties or the sale or disposal thereof or in covering any type of insurance risk thereon including, fire, burglary, riot, flood, rain, water, civil commotion and Act of God and other risks and all service charges, damages, liquidated damage, penalties, compensation and the Bank's full costs, charges and expenses incurred in protecting, enforcing, obtaining and maintaining possession of the Hypothecated Properties all of which are hereinafter collectively referred to as the "Monies Due to the Bank."

4. The Borrower/(s) will not commit any act of insolvency. If at any time the Borrower/(s) is adjudicated insolvent or the Borrower/(s) executes a deed of arrangement or composition with any of its creditors, it shall be lawful for the Bank forthwith or at any time thereafter and without any notice to the Borrower/(s) and without prejudice to any of the Bank's rights of suit or any rights under this deed or under law either by public auction or private contract absolutely to sell or otherwise dispose of all or under law either by public auction or private contract absolutely to sell or otherwise dispose of all or any of the properties forming the Security hereunder either together or in lots or separately and to apply the net proceeds of such sale in or towards liquidation of the "Monies Due to the Bank".
5. The Borrower/(s) shall carry on its business efficiently and will furnish to you verify all statements, reports, returns, certificates, accounts, documents and information from time to time as required by the Bank and will also execute all documents and do all acts and things which the Bank may require to give effect hereto and the Borrower/(s) authorizes the Bank and its agents and nominees to do as required to do hereunder.
6. The Borrower/(s) shall not create any Mortgage, Charge, Hypothecation, Lien or any other Encumbrance upon or over the Hypothecated Properties or any part thereof except to the Bank nor will the Borrower suffer any such Mortgage, Charge, Hypothecation, Lien or Encumbrance to affect the same or any part thereof nor will be Borrower do or cause to be done or allow or cause to be allowed anything that may prejudice the Security hereby granted to the Bank.
7. Nothing herein contained shall prejudice any of the Bank's rights or remedies in respect of any present or future Security, guarantee, obligation or decree for any of the Borrower's indebtedness or liabilities towards the Bank.
8. The Hypothecated Properties shall always be kept distinguishable and by the Borrower in trust as the Bank's exclusive specifically appropriated to this Security to be dealt with only under the Bank's directions.
9. You, your agents and nominees shall be entitled at times without notice to Borrower and at our risk and expense and as Attorney for Borrower and in our name to enter into the factory premises and godowns and inspect, value, insure, supervise and or take particulars and charge of all the Hypothecated Properties and Machineries and check any statements, accounts, reports, returns, certificates and information and also on nay default by Borrower in payment of any Monies hereby secured or the performance of any of our obligations to you or on the occurrence of any circumstances in your opinion endangering the Security to take possession of, recover, receive, appoint receivers, removers and/or sell or otherwise dispose of or deal with the Hypothecated Properties and Machineries and the Hypothecated Properties and Machineries hereafter imported or otherwise acquired and to enforce, realize, settle, compromise and deal with any rights or claims relating thereto without being bound so to do and without prejudice to your rights and remedies of suit or other proceedings. We undertake to give you immediate possession on demand of the Hypothecated Properties and Machineries and to transfer and deliver to you all relative bills, contract, securities and documents and agree to accept your account of sale and

realization as sufficient proof of the amounts realized and relative expenses incurred and to pay any shortfall or deficiency that results there from, provided also that you shall be entitled at all times to recover from Borrower by suit or otherwise the balance remaining payable to you.

10. The Borrower hereby agrees, undertakes, confirms and authorizes that the Bank may, at all times, at all times, be at liberty to pay, incur and reimburse all legal and other incidental expenses as between client and Attorney(s)/Solicitor(s)/Pleader(s)/ Advocate(s) in and towards exercising enforcing and effectively secreting all or any of the Bank's rights and remedies against the Borrower on account of serving of legal notice(s), soliciting and obtaining legal opinion(s) and advice(s), instituting and defending law suit(s) and all proceedings(s), including execution(s), appeal(s) claim(s), petition(s), objection(s), cross-appeal(s), cross objection(s), revision(s), review(s) and all other miscellaneous applications to Courts, Tribunals, judicial or quasi-judicial arbitration, Government or Quasi-Government, Local or any other authorities for appropriate relief(s), and taking all necessary steps towards the full realization of all the Bank's dues from the Borrower and/or on account of obtaining any document(s) agreement(s), contract(s), prepared, drafted, executed and/or registered by any lawyer, pleader, advocate, solicitor and attorney, and the Bank will be the sole judge as to the necessity, time and manner of paying, incurring and reimbursing such expenses as well as the quantum thereof both of which shall be final and shall not be called into question by the Borrower, and the Borrower further agrees, undertakes and authorizes the Bank to debit all such expenses to the Borrower's account with the Bank and the Borrower agrees to accept statements of account of such and/or any entries in respect thereof signed by the Bank as final and conclusive of such of such expenses having been paid or incurred without calling for any vouchers, documents or any other evidence in support of such payments and expenses, and the Borrower agrees to keep the Bank at all times, safe, free, harmless and indemnified against all such expenses, costs and charges as mentioned above.
11. The Borrower shall, whenever required by the Bank, give full particulars to the Bank of all the assets of the Borrower including the Hypothecated Properties and shall at all times allow the Bank or the authorized agent(s) of the Bank, inspection of the Hypothecated Properties and of all records of the Borrower in reference thereto and shall allow the Bank or its agent to value the same. All costs, charges and expenses incurred by the Bank for and incidental to such inspection and valuation shall be borne by the Borrower and shall be paid to the Bank by the Borrower forthwith on demand (the Bank's statement being conclusive) and, until payment, shall constitute part of the "Monies Due to the Bank" and shall be a charge upon the Hypothecated Properties, Any such valuation shall be conclusive and binding upon the Borrower.
12. The Borrower shall at all times during the continuance of this Security keep and maintain such margins of Security in favour of the Bank (hereinafter called the "Margins") as hereinafter mentioned. The Borrower shall not any time operate or draw against any account through which the Credit Facilities may be made available by the Bank to the Borrower so as to cause the debit balance on such account at any time to exceed such

percentage or percentages, as the Bank may from time to time fix, of the cost or market value (market value as determined by the Bank) whichever is lower of the Hypothecated Properties or any class or category or portion of the Hypothecated Properties as specified by the Bank from time to time. It is hereby expressly agreed that the Bank shall be at liberty to fix different Margins for different classes and categories or portions of the Hypothecated Properties as it may deem fit in its sole discretion and the Bank may vary or increase such Margins at any time and from time to time. If and so often as the said Margins shall fail to be maintained, the Borrower shall forthwith (as the Bank may require) either hypothecate to the Bank further assets approved by the Bank and of sufficient value to make up the deficiency or shall reduce the amount for the time being due to the Bank by a cash payment so as to maintain the said Margins.

13. The Borrower undertakes to pay all rents, charges, taxes, outgoings, and other charges related to any immovable property in or on which the Hypothecated Properties or any part thereof is stored.
14. The Borrower shall at its own risk and expense keep the Hypothecated Properties in good and marketable condition and repair and shall fully insure the same against any loss or damage by fire, theft, explosion, lightning, floods, rainwater, insurrection, riots, civil commotion and strike and against such other risks as the Bank may at any time and from time to time require in the joint names of the Borrower and the Bank with any insurance company(ies) as approved by the Bank, and the same shall be assigned in favour of, and delivered to, the Bank and the same shall be for the full market value of the Hypothecated Properties. The insurance policy will be renewed and extended throughout the continuance of this Security and the Borrower will deliver to the Bank all policies and copies of the receipts of premium paid on such insurance. Should the Borrower fail to insure as such or to regularly pay the insurance premium or deliver the policies or receipts of premium, the Bank may (but shall not be bound to) insure the Hypothecated Properties for its full market value with any insurance company(ies) at the Borrower's expense and pay the insurance premium on due date and debit the premium and other charges to the Borrower's account. In such a case, the premium paid by the Bank shall be paid by the Borrower to the Bank within three(3) days after receiving a demand from the Bank requiring payment. The Borrower agrees that all sums received under such insurance cover shall be applied in or towards liquidation of the "Monies Due to the Bank". The Borrower further agrees that the Bank shall be entitled to adjust, settle or compromise in the event of any dispute between the insurance company and the insured arising under or in connection with such policy or policies and such adjustment, settlement or compromise shall be valid and binding on the Borrower. The Bank shall also be entitled to receive all Monies payable under any such policy and to give a valid receipt thereof and the amount so received shall be adjusted towards part payment or part satisfaction of the Borrower's indebtedness hereunder and Borrower shall not raise any question that a larger sum might or ought to have been received nor be entitled to dispute the Borrower's liability for the balance remaining due after such partial payment and adjustment.

15. The Credit Facilities hereby secured shall be wholly applied in the ordinary course of and for the purpose of the Borrower's business.
16. The Borrower shall not have the right to sell or otherwise dispose of or part with possession of any Hypothecated Properties without the prior written consent of the Bank and where the Bank grants its permission for sale of any Hypothecated Properties the Borrower shall, on any and every such sale, upon receipt of the documents or sale proceeds, deliver the documents or pay the net proceeds of sale to the Bank in payment (in so far as the same will extend) or the Monies Due to the Bank. If the Borrower draws a bill of exchange for the price of any hypothecated Properties sold by the Borrower, or for any part of such price, the Borrower shall deliver the bill of exchange to the bank for collection.
17. If after the execution hereof, any circumstances shall occur which in the sole judgment of the Bank is prejudicial to or imperils this Security, then at any time or times after such occurrence the Bank, if it thinks fit, shall be entitled at the risk and expense of the Borrower, and without any notice to the Borrower, to enter (and for the purpose to do any necessary things) any place where the Hypothecated Properties may be or to inspect, take inventories, value, insure and/or to take charge and/or take possession of all or any part of the Hypothecated Properties. And if there shall be any default by the Borrower in payment "Monies Due to the Bank" or in the performance of any obligation to the Bank hereunder or if any circumstance shall occur which in the sole opinion of the Bank shall be prejudicial to or shall endanger or be likely to endanger this Security, the Bank shall be entitled to seize, recover, receive, appoint receivers of or remove and/or sell as attorney for and in the name of the Borrower by public action or private contract or otherwise dispose of or deal with all or any part of the Hypothecated Properties and to enforce, realize, settle, compromise and deal with any right aforesaid without being bound to exercise any of this power or being liable for any enforce, realize, settle, compromise and deal with any right aforesaid without being bound to exercise any of this pore or being liable for any losses in the exercise or non-exercise thereof and without prejudice to the Bank's right remedies of suit(s) or otherwise and notwithstanding that there may be any pending suit(s) or other court proceeding. The Borrower hereby undertakes to transfer and deliver to the Bank all relative contracts, securities, bazaar chits, bills, notes, handiest and documents and agrees to accept the Bank's account of sales and realization and to pay any shortfall or deficiency thereby shown. And if the net sum realized by such sale shall be insufficient to pay the full amount of "Monies Due to the Bank" then outstanding, the Bank shall be at liberty to apply any other money or "Monies Due to the Bank". And in the event of there being still a deficiency, the Borrower in or towards the payment of the balance of the "Monies Due to the Bank:. And in the event of there being still a deficiency, the Borrower shall forthwith pay such deficiency. PROVIDED THAT nothing herein contained shall in any manner prejudice or after the Bank's remedy against the person of the Borrower. Upon any sale or other disposal of the Hypothecated Properties by the Bank as hereunder provided, the Purchase thereof shall not be concerned to enquire whether any of the aforesaid events have happened or otherwise enquire as to the regularity of sale provided that the Bank shall not in any way be liable or responsible for any loss, damage or depreciation that the

Hypothecated Properties may suffer or sustain on any account whatsoever whilst the same is in possession of the Bank or any of its nominees or agents or by reason of the exercise or non-exercise by the Bank of any of its rights and remedies hereunder or otherwise howsoever and that all such loss, damage and depreciation howsoever shall be wholly at the account and expense of the Borrower.

18. In the event of there being a surplus of the net proceeds of any sale or other disposal of the Hypothecated Properties after payment in full of the “Monies Due to the Bank”, it shall be lawful for the Bank to retain and apply the said surplus together with any other Monies belonging to the Borrower (or anyone or more of them) for the time being in the hands of the Bank in or under whatever account, as far as the same shall extend against, in or towards payment or liquidation of any or all other Monies which shall be or may hereafter become due to the Bank from the Borrower (or any or more of them).
19. The Borrower hereby declares and guarantees that the Hypothecated Properties (now in existence) is the absolute and unencumbered property of the Borrower with full power of disposal there over and as to future Hypothecated Properties shall likewise be the absolute unencumbered property of the Borrower with full power of disposal. The Borrower shall not (except upon sale thereof as hereinbefore provided) either remove or permit or suffer the Hypothecated Properties or any part thereof to be removed from the premises or any other place where the same may be without the previous consent in writing of the Bank or payment in cash to the Bank of the value of the same or of replacing the same with other assets of equal value and being acceptable to you.
20. The Borrower confirm that the Hypothecated Properties and all additions thereto and any documents and all sale proceeds received by the Borrower upon any sale or realization and insurance Monies received shall always be kept in trust for the Bank and for this purpose shall be distinguishable and be held as the Bank’s exclusive property specifically appropriated to this Security and be death with only under the direction or the Bank and for so long as any “Monies Due to the Bank” remain unpaid, the Borrower shall not make or create or suffer any mortgage or change, line or encumbrance affecting the same or any part thereof, not do or allow anything which may prejudice this Security and the Bank shall be at liberty to incur any and all costs or expenses as may be necessary to preserve this Security and to maintain the same undiminished and claim reimbursement from the Borrower, and where the Bank has claimed reimbursement, the Borrower shall make payment thereof within 3 (three) business days after receiving the Bank’s demand requiring payment.
21. If the Bank does not enforce or delays enforcement of any of its rights, powers or privileges hereunder in the event of any breach or non-compliance by the Borrower of the terms and conditions herein contained, the inaction, omission or delay of the Bank shall not be construed as acquiescence or waiver or abandonment of any such right.
22. The Borrower agrees to accept as conclusive proof of the correctness of the “Monies Due to the Bank” from the Borrower or any part thereof, a statement of account made out from the books of the Bank and signed by any duly authorized officer of the Bank without the production of any other voucher, document or paper.

23. It is hereby expressly agreed that the amount of the Credit Facilities to be granted by the Bank shall be in the Bank's sole discretion notwithstanding that a specified maximum may at any time be agreed upon or that there is a Margin in accordance with the terms thereof and that the Borrower's total liability to the Bank howsoever arising is payable on demand and if not paid in full on demand, the Bank shall in addition to the rights and remedies herein provided have all other rights and remedies available to the Bank whether by common law or by any statute or according to customs or otherwise for recovery of the Borrower's indebtedness to the Bank in respect of such liability whether the securities, have been sold or not and the Book Debts and Receivables of the Borrower shall have been realized wholly or partly or not at all.
24. If upon demand being made by the Bank for payment for any "Monies Due to the Bank" or of any other amount due to the Bank hereunder, the Borrower fails to make payment within 3 (three) business days of receiving such demand from the Bank, the Borrower shall pay to the Bank together with any costs and expenses incurred by the Bank in or associated with effecting recovery.
25. The Borrower agrees and undertakes that immediately after the execution of this Letter of Hypothecation, it shall register the charges hereby created by it in favour of the Bank over the Hypothecated Securities in accordance with the current Company Law, and shall do all such other and further acts as are incidental to the same and shall promptly deliver to the Bank the Certificate of Registration of the charges in the Bank's favour.
26. The Borrower shall indemnify the Bank and keep the Securities safe, free, harmless and indemnified against all losses, damages, detriments, harms, claims, liabilities, demands, costs, charges and expenses that may be sustained by or made against or incurred by the Bank, or its agents or nominees in exercising any of the rights, powers or discretion herein contained.
27. The Borrower shall furnish and verify all statements, reports, returns, certificates and information from time to time as required by the Bank and give and execute any necessary documents required to give effect to this Security.
28. The Securities shall be continuing Security for "Monies Due to the Bank" from time to time and where the accommodation is by way of cash credit/overdraft, the said cash credit/overdraft account is not to be considered to be closed for the purpose of the Securities and the Securities are not to be considered to be exhausted by reason of the said cash credit/overdraft account being brought into credit at any time or from time to time or of its being drawn upon to the full extent if afterward reopened by a payment of credit or under any instrument.
29. The Borrower (where it is a corporate body or partnership) represents and warrants that it is duly established and existing under the laws of Bangladesh and has the power to own its assets and conduct its business and that the execution of this Letter of Hypothecation has been duly authorized by the necessary corporate or other actions and that the obligations expressed as being assumed hereunder constitute valid and binding obligations enforceable against the Borrower in accordance with its terms, and the Borrower further represents and warrants that it shall carry on its business efficiently and agrees and undertakes to execute

such deeds or documents as may be required by the Bank to further perfect, protect and ensure better enforcement of the Securities hereunder created and if the Borrower fails to do the same within the time (if any) stipulated by the Bank for that purpose, the bank is hereby irrevocably appointed and authorized to act as the holder of the Power of Attorney of the Borrower to execute on behalf of the Borrower such further documents as may be required by the Bank and take any steps required for preservation, enforcement and realization of the Securities hereunder entirely at the cost and expense of the Borrower.

30. Nothing herein shall operate to prejudice the Bank's rights or remedies in respect of any present or future Security, guarantee, obligation or decree for any indebtedness or liability of the Borrower to the Bank.
31. If the Borrower be more than one individual, all shall be bound hereby jointly and/or severally and if the Borrower shall be a firm, such firm and all members from time to time thereof shall be bound hereby notwithstanding any changes in the constitution or style thereof and whether the firm shall consist of or be reduced to one individual.
32. If and whenever the Securities shall be held by the Bank for the Borrower's liability to the Bank for any third party's obligations to the Bank, then the Bank shall be free without reference to the Borrower to deal and the Borrower hereby consents to the Bank dealing with the principal debtor and with securities, obligations or decrees and generally to act as if the Borrower were primarily liable and to give time or other indulgence or make any variation without thereby in any manner impairing or prejudicing the Bank's rights against the Borrower, who declares that the liability of the Borrower shall be deemed to be that of a co-promissory with such third party.
33. Any notice given by the Bank under this agreement shall be deemed to have been delivered to the Borrower, if delivered personally or if posted/couriered to the address registered with the Bank whether such address is then the actual address or not. such notice, if posted/couriered, shall be deemed to have been delivered to the Borrower, who declares that the liability of the Borrower shall be deemed to be that of a co-promissory with such third party.
34. It is agreed that the Bank do not enforce any of its rights hereunder in the event of breach or noncompliance by the borrower of any of the terms and conditions hereunder the Bank's inaction or omission to take action shall not be treated as acquiescence or as a waiver, surrender or abandonment of any such right.
35. The term "Bank" and "Borrower" wherever the context so permits shall mean and include his/her/its/their respective successor-in-interest and assigns and in the case of individuals, executors, administrators, heirs and personal representative.
36. Without prejudice to the Bank's right to take proceedings against the Borrower in any other court of competent jurisdiction, and without precluding the Bank's right to take proceedings in any other jurisdiction (whether concurrently or otherwise), the Borrower hereby agrees to submit to the jurisdiction of the tribunals and courts in Bangladesh and agrees that any judgment of such tribunals/courts shall be binding upon it.

If this agreement is signed or otherwise executed by or on behalf of more than one party, the obligation and the liability of such parties shall be deemed to be joint and several unless expressly stated to the contrary.

It is also understood that any word appearing in the singular will also apply for the plural and vice versa.

IN WITNESS whereof we executed these presents on the day, month and year first hereinabove written.

Authorised Signature

Authorised Signature

Witness

1. _____

Name:

Address

Witness

1. _____

Name:

Address:

Sample

BEFORE THE NOTARY PUBLIC AT DHAKA, BANGLADESH **IRREVOCABLE GENERAL POWER OF ATTORNEY TO SELL** **HYPOTHECATED PROPERTIES**

This Irrevocable General Power of Attorney is made on this the _____ day of _____ 200_____ of the Christian Era.

I/We, _____, a proprietorship business concern/private/public limited company incorporated in Bangladesh under the relevant Companies Act, having its office at _____, (hereinafter referred to as the "Principal"), represented by its _____ Mr. _____ who is duly authorized by the Board of Directors in terms of its Resolution no. _____ dated _____ to execute this Irrevocable General Power of Attorney, do hereby state as follows:

WHEREAS :

By a Letter of Hypothecation dated _____, the properties described in the Letter of Hypothecation (hereinafter referred to as the "Properties") were hypothecated as a continuing security for repayment of credit facilities totaling Tk _____ (Taka _____), only granted to the Principal by:

Swadesh Bank Limited, a scheduled bank incorporated under the Companies Act, 1994 and governed by the Bank Companies Act, 1991; having its Head Office at 195, Motijheel Commercial Area, Dhaka-1000, Bangladesh; hereinafter referred to as the "Bank" (which expression shall, where the context so admits include its successor(s)-in-interest, legal representatives, executors, administrators and assigns) on the terms and conditions contained in the Credit Contract/ Sanction Advice issued by the Bank and accepted by the Principal.

In order to exercise the powers of sale in relation to the Properties it is necessary for the Principal to execute this Irrevocable General Power of Attorney in favour of the Bank in the manner stipulated hereunder.

Wherever any exercise term is used in this Power of Attorney and not defined hereunder, such term shall have the meaning given to it in the Letter of Hypothecation.

KNOW ALL MEN BY THESE PRESENTS THAT, the Principal do hereby made, nominate, constitute, ordain and appoint the Bank, to be the true and lawful attorney (hereinafter referred to as the "Attorney") for and on behalf of and in the name of the Principal, with full powers of substitution and delegation, to do, execute and perform, or cause to be done, executed and performed, at any time or from time to time, all or any of the acts, deeds, matters, things and authorities hereinafter mentioned:

- (i) upon the occurrence of an event of default or breach of the Letter of Hypothecation; or
- (ii) at any other time if specified herein; or
- (iii) if the Bank and the Principal otherwise agree that this Power of Attorney should become exercisable;

The rights, powers, acts or discretion conferred by the Principal upon the Attorney are:

1. To enter into and take possession of the Properties or any part thereof and to take its entire administration, management and control;
2. To sell or dispose, in case of failure to repay the credit facility(s) within stipulated time, of the Properties or any part thereof together or in parcel on account and at our risk, without intervention of any court of law, either privately or by public auction or by private contract on such terms and conditions as the Attorney shall think fit and proper, without any reference to us;
3. To realize and receive the sale proceeds and any other monies receivable in respect of the Properties or any part thereof and apply the same towards the liabilities of the Principal with Attorney;
4. To seal, sing and execute the necessary deeds, present those for registration and get the same registered or assigned (as the case may be) and to vest the Properties or any part thereof in any transferee, together with all rights of the owner in upon, or to the Properties or any part thereof as if the same had been sold to the transferee by the Principal for as the owner.
5. To incur any expenditure on behalf of the Principal that may be necessary for taking over, management and control of the Properties or any part thereof and for sale, charge or disposal thereof and to incur any liabilities on behalf of the Principal for the said purpose.
6. To advertise through newspapers or otherwise for auction of the Properties or any part thereof, to arrange and effect the auction or sale to receive the bid money, and apply the same in meeting expenses and in liquidating the indebtedness of the Principal to the Attorney.
7. To do and perform all other acts, matters, and things that may be necessary or proper for completing the sale or disposal of the Properties or any part thereto;

8. To realize, receive and take payment of any consideration or purpose money or other monies that may become payable to the Principal in connection with such sale or disposal as aforesaid, and upon receipt thereof to give and grant sufficient and effectual receipts or discharges for the same;
9. To appear, represent and act in all civil or criminal Courts or arbitration and before judicial, quasi-judicial, statutory and revenue authorities, either in the original or appellate side as well as in any government department, local authority, autonomous, semi-autonomous authority or other body corporate, and to prosecute or defend or to take part in all or any action, application, suit, appeal, proceeding, and for such purpose to subscribe, sign and verify all complaints, written statements and any memorandum of appeal and to do all acts, deeds and things which may be necessary in relation thereto, and to execute any power or vokatnamas by signing on behalf of and in the name of the Principal.
10. To collect, receive and take in respect of the Properties payment of any receivables or book debts of the Principal or other monies that may become payable to the Principal from any person, firm, company or authority and upon receipt thereof to give and grant sufficient and effectual receipts or discharges for the same;
11. To represent the Principal before any authorities, the Bangladesh Bank or any other person in connection with the transactions referred to herein above, and sign and execute whatever instruments that may be necessary for obtaining the approval, if required, of such transactions by any authority or any other organization or institution for the purpose of completion of the sale of the Properties.
12. To appear, represent and act in all civil or criminal Courts or arbitration and before judicial, quasi-judicial, statutory and revenue authorities, either in the original or appellate side as well as in any government department, local authority, autonomous, semi-autonomous authority or other body corporate, and the prosecute or defend or to take part in all or any action, application, suit, appeal, proceeding, and for such purposes to subscribe, sign and verify all complaints, written statements and any memorandum of appeal and to do all acts, deeds and things which may be necessary in relation thereto, and to execute any power or okalatnamas by signing on behalf of and in the name of the Principal.
13. To appoint and retain lawyers and advocates and to remove such advocates and retainers from time to time and again to appoint as occasion shall require for the aforesaid purposes.
14. To apply for withdrawal, withdrawal, withdraw and receive all monies that may be deposited in any Court or office connecting the Properties or any part thereof in case of acquisition or requisition of the Properties or any part thereof by any Government or other lawful authority.
15. To appear before any registering authority having jurisdiction in that behalf in relation to the Properties for registration and acknowledge and register pursuant to the provisions and regulations in that respect for the time being in force, all instruments and writings including sale deeds, deeds of conveyance, mortgage deeds executed and signed either by the Principal directly or under the authority of these presents and to present for registration and to admit execution thereof and do all such acts, and deeds in that behalf as the Attorney may believe is proper and expedient.

16. Without notice to the Principal set off, transfer or apply all or any of the monies from time to time standing to the credit of any account in the name of the Principal in or towards the discharge and satisfaction of all sums of money which are, at the time, due or owing to Attorney by the Principal.
17. At any time (including, for the avoidance of doubt, prior to the occurrence of an event of default) to sign, execute, seal, deliver, perfect and do all deeds, documents, assurances, instruments, acts and things which the Attorney may consider to be required or desirable in connection with expediting the powers granted herein;
18. To appoint by deed or in writing under hand anyone or more qualified persons from an accounting firm of international standard (or its equivalent) (or such other firm as we, acting reasonably and without undue delay may agree) to be a receiver or manager (the "Receiver") of all or any part of the Properties on such terms and conditions as the Attorney deems fit and appropriate and to remove any Receiver appointed by it and appoint a new Receiver in its place. This power shall be in addition to all statutory and other powers of appointment under the Code of Civil Procedure, 1980 (Act V of 1908). The Receiver is deemed to be the agent of the Principal for all purposes and Attorney shall not incur any liability (either to the Principal or to any other person) by reason of Attorney making its appointment of as Receiver or for any other reason.
19. At any time (including, for the avoidance of doubt, prior to the occurrence of an event of default) and from time to time to appoint any substitute or substitutes and to delegate to him or them all or any of the powers, authorities or discretion vested in the Attorney under or by virtue of these presents (other than this power of substitution) and to remove any such substitute or substitutes at pleasure and appoint another or others in his or their place, to do all or any acts, deeds, matters and things hereunder, as may be necessary, usual, proper or expedient for the purposes hereof.
20. To do, perform, sign and execute generally each and all other acts, deeds, matters and things legally and effectively, which the Attorney may deem necessary and expedient for any of the purposes aforesaid or otherwise as the Principal could have done if personally present.

AND the Principal do hereby ratify and confirm whatever the said Attorney or any substitute(s) acting under them shall lawfully do or purport to do or cause to be done by virtue of these presents

AND the Principal do hereby ratify and confirm whatever the said Attorney or any substitute(s) acting under them shall lawfully do or purport to do or cause to be done by virtue of these presents

AND the powers conferred on the Attorney hereunder are solely to protect the interests of Attorney in the Properties and shall not impose any duty upon the Attorney to exercise any such power. The Attorney shall be accountable only for amounts that is actually received by it as a result of the exercise of such powers, and neither it, nor any of its officers, directors, employees, or agents, shall be responsible to the Principal for any act or failure to act hereunder.

THE PRINCIPAL HEREBY DECLARES AND ACKNOWLEDGES that the Attorney have interest in the Properties which from the subject matter of this Power of Attorney, and hence this Power of Attorney shall be irrevocable, and shall not be terminated, revoked or rescinded by the Principal and its successors and assigns or any other person for any reason whatsoever until the Principal's indebtedness to the Attorney is fully adjusted and settled and the Attorney releases the Principal absolutely from all liabilities whatsoever, and until that time we shall not execute any other power of attorney in favour of any other person in connection with the Properties.

THE PRINCIPAL HEREBY DECLARES that if any dispute arises in relation to the Properties between the parties, the matter shall be referred to the Arbitration without going to the Court and that the Principal will not be entitled to report to the police or any other government authorities.

THE PRINCIPAL FURTHER DECLARES That this irrevocable Power of Attorney is valid and binding on the Principal, its successors and assignees.

AS WITNESS WHEREOF the Principal has executed this Power of Attorney on the day, month and year written above.

In Witness whereof:

Signed, sealed and delivered by _____

Through its authorized signatory in terms of Board Resolution dated _____.

By _____
Name:
Designation:

1. _____

Name:

Address:

2. _____

Name:

Address:

Sample

**Letter of Lien and Authority for
Advances against Fixed Deposits/Fcy/Deposits/
Call Deposits/Special Deposits or Margin Deposits**

The Manager,
Swadesh Bank Limited
_____ Branch
Place _____
Date _____

Dear Sir/Madam,

In consideration of your granting at my/our request a loan/overdraft limit of Tk. _____ (Taka _____) only to me / us _____ hereinafter referred to as the principal Borrower(s) I / We _____ jointly and severally) guarantee to you repayment of the said loan _____ overdraft with all interest due thereon and all _____ costs, charges and expenses for recovery thereof.

By way of security I am/ We are hereby giving to you a lien and/or right to set-off against the balance in my/ our account mentioned at the foot hereof (hereinafter referred to as the said account). I/We hereby undertake not to withdraw or call back the deposit in the said account until the loan/overdraft account of me/us (Borrower(s) is fully adjusted with interest with interest accrued thereon.

It at any time you wish to call back the loan overdraft allowed to me/us you shall be at liberty to do so and if I / We fail to repay the loan overdraft with interest accrued thereon any part thereof, I / We hereby authorise you to appropriate from the said account any amount that may be necessary to get the loan/overdraft account of me I us adjusted with all interest accrued due thereon without any reference to me / us.

I/We confirm that your rights hereunder shall not be prejudiced by any time or indulgence allowed by you to me/us or by my/our release from liability by operation of law or otherwise howsoever or by your releasing any security otherwise held by you against the loan/overdraft account of the borrower(s) (I/We or any other person or persons or by reason of any change in the constitution of the Principal Borrower(s) or your Bank.

My/Our liabilities hereunder shall be as that of debtor (s).

I/We further undertake to sign and deliver to you other document or documents that you may from time to time or at any time require from me/us hereunder.

PARTICULARS OF ACCOUNT UNDER LIEN AND AUTHORITY TO SET OFF

No. of Account	Nature of Account	person(s) in whose names the account stands	Balance in Account	Remarks

Yours faithfully,

Signature

Date : _____

Swadesh Bank Limited

_____ Branch

Sample

LETTER OF UNDERTAKING

Dear Sir(s) / Madam(s),

In consideration of your making or continuing to make advances or otherwise giving credit or providing credit or providing finance to us under one or more modes of “finance” or otherwise affording any other banking facilities or other accommodation of any kind, hereinafter referred to as “Credit Facilities” up to a limit of Tk. _____ (Taka _____) only I/We _____ at _____ hereinafter called the “Borrower”,

DO HEREBY AGREE, UNDERTAKE AND COVENANT AS FOLLOWS:

The Borrower hereby confirms to the Bank that the Equity of the Company together with the Loans from the Directors/Shareholders shall be maintained at all times at a minimum of Tk. _____ (Taka _____) only. This amount will not be reduced or returned to the Directors/Shareholders without the prior written consent of the Bank, even when the accounts may be in the clear credit in favour of the Borrower.

If this agreement is signed or otherwise executed by or behalf of more than one party, the obligations and liabilities of such parties shall be deemed to be joint and several unless expressly stated to the contrary.

I am also understood that any word appearing in the singular will also apply for the plural and vice versa.

IN WITNESS, whereof we executed these presents on the day, month and year first hereinabove written.

Authorized Signature

Authorized Signature

Witness:

1. _____

2. _____

Name:

Name:

Address:

Address:

Sample**Letter of Line and Set-Off over Deposit Accounts**

The Manger
 Swadesh Bank Limited
 _____Branch

Date _____
 Place _____

Dear Sir / Madam,

- I. In consideration of your granting or continuing banking facilities or other accommodation in any amount as long as the Bank may think fit to _____ pledge that the deposits maintained including interest accrued in the _____ with your Swadesh Bank Limited, Dhaka in my/our name(s) be held by you under lien/pledge as security for repayment of any advances you may make from time to time with interest and charges thereon from time to time agreed upon.
- II. I/We hereby declare and acknowledge that the deposits maintained in the aforesaid Fixed Deposits/Short Term Deposit Account including interest accrued thereon in my/our name(s) will be a continuing security, notwithstanding the fact that by payments made into the account of the loan from time to time, the loan may from time to time be reduced or extinguished or even that the balance of the said account may be at credit.
- III. I/we hereby agree that the Bank may at any time or times hereinafter without notice to me/us set off transfer or apply all or any of the monies from time to time standing to the credit of my/our aforesaid account in or may become due or owing to the Bank by me/us either alone or jointly with any other person or persons, company or companies on any account or in respect of any liability whatsoever whether actual or contingent and whether in the character of principal debtor or in respect of any liability whatsoever whether actual or contingent and whether in the character of principal debtor or guarantor or surety or otherwise.
- IV. I/We hereby also agree that until all liabilities shall have been fully discharged and satisfied the Bank may retain such Monies as the Bank in its absolute discretion may consider necessary to meet such liabilities on maturity.
- V. I/We further hereby declare and acknowledge that I/We shall have claim whatsoever to the amounts in the Fixed Deposit/short Term Deposit Account including interest until I/We have received from you notice in writing to the effect that you no longer require the Fixed Deposit/ Short Term Deposit as security for the purpose herein specified.
- VI. I/We further hereby declare that this Undertaking and authorization shall be binding in the manner aforesaid on my/our heirs, successors and assigns.

Yours faithfully,

Signature

Witness:

1. Signature

Name

Address

2. Signature

Name

Address

Sample**MEMORANDUM OF DEPOSIT OF CHEQUES**

Date: _____

The Manger
Swadesh Bank Limited
_____ Branch

1. In consideration of the Bank granting or continuing credit facility in any amount as long as the Bank may think fit to me/us, hereby declare that I/we have deposited cheques described in the Schedule below including interest accrued thereon (hereinafter referred to as the "cheques") and acknowledge that the cheques are drawn by me/us and are to be held by the Bank as continuing security for repayment of any advances the Bank may make from time to time with interest and charges thereon from time to time applicable or agreed upon.
2. I/we hereby declare and acknowledge that the cheques will be a continuing security, notwithstanding the fact that by payments made on the account of the credit facilities or advances from time to time reduced or extinguished or even that the balance of the said account may be in credit.
3. I/we hereby agree that the Bank may at any time or times hereinafter without notice to me/us present all or any of the cheques and set off, transfer or apply or any of the money from the cheques from time to time in or towards the discharge and satisfaction of all sums of money which now are or at any time or times hereinafter may become due or owing to the Bank by me/us either alone or jointly with any other person or persons, company or companies, on any account or in respect of any liability whatsoever whether actual or contingent and whether in the character of borrower, principal debtor or guarantor or surety or otherwise.
4. I/we hereby also agree until all liabilities whether whether actual actual or contingent, primary or collateral, joint or several shall have been fully discharged and satisfied the bank may retain the cheques as the bank in its absolute discretion may consider necessary to meet such liabilities on maturity or otherwise.
5. I/we further hereby declare and acknowledge that I/we have nor shall have nay claim whatsoever to the amounts of the cheques and undertake that the cheques will be honored on presentment and will retain sufficient sums for payment of the cheques, until I/we have received from the bank notice in writing to the effect that the Bank no longer requires the cheques or the amounts of the cheques as security.
6. The Bank shall be entitled to require from me/us other cheques from time to time at its sole discretion without reference to me/us until such time as all liabilities and obligations which are outstanding against me/us are fully satisfied and discharged, and the other cheques shall continue to be held by the Bank as security in the same way as the cheques.
7. If the cheques are undated, I/we hereby authorize the Bank to insert any date in all or any of the cheques from time to time.

8. I/we hereby further declare that this letter shall be binding on my heirs, representatives and successors, and shall be valid notwithstanding any change in the amalgamation, or acquisition of the Bank with any other corporate body.
9. I/we hereby further declare that I/we hereby authorize the Bank to disclose information with regard to the cheques and for this to any regulatory authority, any office of the Bank, any assignee of the Bank, agent of the Bank or to any subsidiary company of the bank.

SCHEDULE
Description of Cheques

Drawee Bank & Branch	Account No.	Check No.	Date	Amount

Signature of Principal Applicant

Signature of Joint Applicant

Name:

Name:

Sample

PERSONAL GUARANTEE

Date:_____

The Manager

Swadesh Bank Ltd.

_____Branch

1. In consideration of your making or continuing or extending SBL Smart Term Loan or SBL Smart Cash Credit facilities for as you may think fit to:

(Name and address of Borrower)_____

(hereinafter called the "Principal Debtor") Hereby Guarantee to you the repayment when due or earlier on demand in writing being made to us/me by you or any of your duly authorized officers of all moneys advanced to or paid for or on account of the Principal Debtor of an aggregate principal amount of: Tk._____
(Taka _____ only) plus all costs, interests, charges and expenses, including all legal costs and fees incurred by you in relation to the recovery of sums due and payable to you by the Principal Debtor whether before or after the date hereof and remaining unpaid or which shall at any time hereafter be owing or payable to you on any such account or any negotiable instrument or any other account whatsoever by the Principal Debtor whether as principal or surety and whether alone or jointly with any other person and in whatever name, style or firm including :

- (a) in the case of the death, insolvency or liquidation of the Principal Debtor, sums which would at any time have been owing to you by the Principal Debtor such death had occurred or such insolvency or liquidation had commenced at the time when you receive actual notice thereof and notwithstanding such death, insolvency or liquidation;
 - (b) all money obtained from or liabilities to you notwithstanding that the borrowing or incurring of such liabilities may be invalid or in excess of the powers of the Principal Debtor or any director, attorney, agent or other person purporting to act on behalf of the Principal Debtor and notwithstanding any other irregularity in obtaining such money or incurring such liabilities;
 - (c) in the event of the discontinuance by any means of this guarantee all cheques, drafts, bills, notes and negotiable instruments drawn by or for the account of the Principal Debtor or on you or your agents and purporting to be dated on or before the date when such discontinuance becomes known to you or your agents although presented to or paid by you or them after that date and all liabilities of the Principal Debtor to you at such date whether certain or contingent and whether payable forthwith or at some future time or times and also all credits then established by you for the Principal Debtor; together with any accrued interest or other return or any compensation, commission, banking charges, legal and other costs, charges and expenses that may be payable.
2. This shall be a continuing guarantee and shall not be considered as either wholly or partially satisfied by the receipt by you of any sums at any time in payment or discharge wholly or partly of the said moneys or of the debts for the time being owed by the Principal Debtor but shall extend to cover all moneys which shall at any time hereafter be advanced to or paid for or on account of the Principal Debtor or be owing or payable to you by the Principal Debtor notwithstanding the receipt by you of any such sums.
3. If the Principal Debtor is a minor or a person under a legal disability or is a committee or association or other unincorporated body which has no legal existence or which is under no legal liability to discharge obligations undertaken or purported to be undertaken by it or on its behalf, this guarantee shall be valid and binding on us/me notwithstanding that fact as though we were joint and several Principal Debtors.
4. You may accept from the said Principal debtor any securities you may think proper and grant to the Principal Debtor or to any drawer, acceptor or endorser of bills of exchange or promissory notes or to any other persons, parties to any securities or guarantees received by you from them or otherwise held by you any time or other indulgence and compound with and accept any composition from or release the Principal Debtor, any such drawer, acceptor, endorser, and persons, and rallies, give up, modify, exchange or abstain from perfecting or enforcing any securities as you may think expedient without discharging or satisfying the liability of me or any of us or in any way invalidating or prejudicing this guarantee and that you may prove and rank as creditors in the bankruptcy, insolvency or liquidation of the Principal Debtor or any such persons as aforesaid in respect of the

general balance of your account with the Principal Debtor or other person and that all dividends, compositions, proceeds of securities, payments and moneys received by you in respect of the total liability to you of the Principal Debtor or his estate shall be taken and applied as payment in gross and that our/my liability under this guarantee shall extend to the payment of any ultimate balance that shall remain unpaid after deducting all such payments.

5. The liability of any of us/me hereunder shall not be affected by any failure by you to take any security or by any invalidity of any security taken or by existing or future agreement by you as to the application of any advances made or to be made to the Principal Debtor or should this guarantee prove not to be binding on any on or more of us/me for any reason whatever.
6. Until all money and liabilities due or incurred by the Principal Debtor to you shall have been paid or discharged, I/we shall not, nor shall any of us, by paying off any sum recoverable hereunder or by any other means or on any other ground, claim any set-off or counter-claim against the Principal Debtor in respect of any liability on the part of us or any of us/me to the Principal Debtor or claim or prove in competition with you in respect of any payment by any of us/me hereunder or be entitled to claim or have the benefit of any set-off counter-claim or proof against or dividend composition or payment by the Principal Debtor of his estate or the benefit of any other security which you may now or hereafter hold for any money or liabilities due or incurred by the Principal Debtor to you or to have any share therein.
7. Any security now or hereafter held by or for me/us, or for any of us, from the Principal Debtor in respect of the liability of me/us, or any of us, hereunder shall be held in trust for you and as security for our/my liability hereunder.
8. Any admission or acknowledgement in writing by the Principal Debtor or any person on behalf of the Principal Debtor of the amount of the indebtedness of the Principal Debtor or otherwise in relation to the subject matter of this guarantee or any judgment or award obtained by you against the Principal Debtor or proof by you in insolvency or companies winding up which is admitted, or any statement of account furnished by you, the correctness of which is certified by any one of your managers or any of your duly authorised officers shall be binding and conclusive on us/me and our respective estates/my estate.
9. After demand made on us or any of us/me you shall have a charge upon all securities belonging to us or any of us/me then held by you and on all moneys then standing to the credit of us or any of us/me with you or any current or other account as security for payment by us/me of our/my liability hereunder and further if the Principal Debtor is a firm this guarantee shall continue to be binding notwithstanding any changes that may from time to time take place in the persons constituting the firm of the Principal Debtor or in the name of the firm, or any other change of circumstances, it being intended that this security shall apply to any and every indebtedness or liability to you of the persons or person for the time being carrying on or continuing the business now carried on by the Principal Debtor.

10. You may at your absolute discretion release, compound with, or otherwise vary the liability under this guarantee with the Principal Debtor or a co-surety or the undersigned, without releasing, discharging or diminishing the liability of the others or other of the undersigned, who shall be and continue jointly and severally liable to you to the full extent of the guarantee.
11. In the event of this guarantee ceasing from any cause to be binding as a continuing guarantee on the undersigned or any one of the undersigned, you may open a fresh account or continue any existing account with the Principal Debtor and no moneys paid onto any such account by or on behalf of the Principal Debtor and subsequently drawn out shall affect or diminish the liability of me or us or any of us under the guarantee.
12. The sum to be ultimately recoverable from us/me under this guarantee shall not exceed the principal sum stated above, plus with such further sum representing interest thereon and all your costs, charges and expenses, including all legal costs and fees or a full indemnity basis, in relation to the recovery of sums due and payable by the Principal Debtor, and for the enforcement of this guarantee.
13. Any demand for payment or notice under this guarantee shall be sufficiently given to me/us if sent to me/us or any one of us by courier or post or delivered by hand to the last known address or to the address of the personal representatives to whom such demand or notice is to be made or given and shall be assumed to have reached the addressee in the course of post if given by post and no period of limitation shall commence to run in favour of me/us, or any of us, until after demand for payment in writing shall have been made or given as aforesaid.
14. No relaxation, forbearance or indulgence granted by you to us/me shall affected our/my liability to you hereunder nor shall any release of or agreement not to use us/me affect the liability of other and this guarantee shall bind us/me and our/my successors-title and assigns.
15. You shall be at liberty to release or discharge us/me from the obligations under this guarantee or to accept any composition form or made any other arrangement with us/me without thereby prejudicing or effecting your right and remedies against the others.
16. This Continuing Guarantee is to be construed according to and the rights of the parties hereunder are to be governed by the laws of Bangladesh

Signature: _____

Name: _____

Sample**INFORMATION OF GUARANTOR**
(Eligible guarantor)

I have read and understood the terms and conditions of SMART Cash Credit / SMAT Term Loan of Dutch Bangla Bank Ltd. I hereby agree to guarantee any credit facilities agreed to be granted or continued, granted and continued, by the bank to :—

Name of Applicant : _____
Address : _____

My Personal details are furnished below:

Name : _____
Spouse Name : _____
Father's Name : _____
Mother's Name : _____
Relation with the Applicant : _____
Present Residential Address : _____
Permanent Address : _____
Telephone & Mobile No. : _____
Net Income : _____
Existing Loan : _____
TIN : _____
Occupation : _____
Employer's Name : _____
Designation : _____
Business Address & Phone : _____

I shall notify the Bank immediately of any changes to any of information stated above.

Signature of the Guarantor: _____ Date: _____

Signature of the Applicant: _____ Date: _____

Sample

LETTER OF DISBURSEMENT

Date: _____

The Manager
Swadesh Bank Ltd.
_____ Branch

Dear Sir/Madam,

Ref.: Loan for Tk _____ (Taka _____) only with
reference to the above loan availed by me/us, I/we have signed a Demand Promissory Note for
Tk. _____ Please disburse the amount of loan by crediting the same to my/our
Account No. _____.

Signature

CHAPTER 21

Various Applications

In a pending case, be it in civil suit, criminal case, writ petition, company matter, appeal, miscellaneous case, reference application or any other, either party can file application at different stages as permissible by law. In this Chapter, samples of various applications have been given for usual purpose.

Sample

IN THE SUPREME COURT OF BANGLADESH HIGH COURT DIVISION (SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO . 2430 OF 2019

IN THE MATTER OF:

An application for direction upon the respondents for paying honorium /remuneration and other allowances to the petitioner in which he is legally entitled by dint of his post/position as the Zilla Parishad Chairman, Ward No.7, Cox's Bazar in accordance with law.

AND

IN THE MATTER OF:

Zahidul Islam Litu

..... **Petitioner.**

-VERSUS-

The Government of People's Republic of Bangladesh, represented by its Secretary, Ministry of Local Government, Rural Development and Cooperative, Bangladesh Secretariat, Dhaka and others.

..... **Respondents.**

AND**IN THE MATTER OF:**

Zahidul Islam Litu, son of Delowar Hossain and Jaheda Begum, of Village- Pashlakata Immam Uddin Para, 7 no. Ward, Chokoria Pourashava, Police Station- Chokoria, District- Cox's Bazar.

..... **Applicant.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Hon'ble Supreme Court of Bangladesh.

The humble petition of the above named petitioner-applicant most respectfully,—

S H E W E T H:

1. That the petitioner has filed this writ petition, and after hearing the learned Advocate of the petitioner and perusing the documents was pleased to issue Rule Nisi and grant stay in the following manner vide order dated 05.03.2019 which as follows :

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned proggapon being ৪৬.০০.০০০০.০৪২.১৮.০০১.১৯-২২৮ dated 07.02.2019 issued under the signature of the respondent No.3 declaring the post/position of the petitioner as Zilla Parishad Chairman, Ward No. 7, Cox's Bazar vacant from the dated 27.01.2019 (Annexure- “D”), should not be declared to be without lawful authority and are of no legal effect and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The Rule is made returnable within 04 (four) weeks from date.

Pending hearing of the Rule, let operation of the impugned proggapon being ৪৬.০০.০০০০.০৪২.১৮.০০১.১৯-২২৮ dated 07.02.2019 issued under the signature of the respondent No.3 declaring the post/position of the petitioner as Zilla Parishad Chairman, Ward No. 7, Cox's Bazar vacant from the date 27.01.2019 (Annexure- “D”), be stayed for a period of 06 (six) months from date.”

2. That no appeal has been filed against the said order of this Hon'ble Court.
3. That thereafter already a couple of months have been passed, but the petitioner has not been given with any remuneration or honorium and other allowances in accordance with law. Under the circumstances, he requested to the concerned authorities for honorium. Photocopy of the letter is annexed hereto and marked as **Annexure- “1”**.
4. That in response to the same, the Chief Executive Office, Zilla Parishad, Cox's Bazar opined in favour of the petitioner. Photocopies of those documents are annexed hereto and marked as **Annexure- “2”**.

5. That subsequently, 2 (two) months have already been passed, but no step has been taken on the part of the respondents to give him his entitlement and facilities under law.
6. That the petitioner is performing his duties regularly without any objection from any corner. He is carrying out all his performances in accordance with law by dint of his post and position. As such, the petitioner is legally entitled to all the entitlements i.e. remuneration/ honorium along with other allowances as per the relevant provision of law. Without getting any honorium and other allowances, the petitioner is suffering a lot and his fundamental rights have been prejudicing severely by the respondents. As such, the respondents may kindly be directed to pay honorium/remuneration and other allowances to the petitioner in accordance with law.
7. That the applicant craves leave of the Hon'ble Court to swear affidavit of this writ petition with the photocopies of the annexures, original of which are remaining of the office of the respondents. The petitioner assures that the contents of the annexures are true and genuine and the learned Advocate of the petitioner has duly attested those papers.

WHEREFORE, it is humbly prayed that your Lordships would be graciously pleased to direct the respondents to pay honorium /remuneration and other allowances to the petitioner in which he is legally entitled by dint of his post/position as the Zila Parishad Chairman, Ward No.7, Cox's Bazar in accordance with law and/or pass such other order/orders for securing further relief/reliefs as your Lordships deem fit and proper.

And for her act of kindness, the petitioner-applicant as in duty bound shall ever pray.

A F F I D A V I T

I, Zahidul Islam Litu, son of Delowar Hossain and Jaheda Begum, of Village- Pashlakata Immam Uddin Para, 7 no. Ward, Chokoria Pourashava, Police Station- Chokoria, District- Cox's Bazar, date of birth: 20.10.1974 by faith- Muslim, by profession- Business by nationality- Bangladeshi, National ID No. 2221607085109 hereby solemnly affirm and say as follows:—

01. That I am the petitioner-applicant of this writ petition and I am acquainted with the facts and circumstance of the case and as such I am competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Shahadat Hossain)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of August, 2019
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Shahadat Hossain)
Advocate
Membership # 6731
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 15370 OF 2016.

IN THE MATTER OF:

An application for addition of party as the respondent
Nos. 10-13.

AND

IN THE MATTER OF :

Alhaj Md. Mustafizur Rahman and another.

..... **Petitioners.**

-Versus-

The Government of People's Republic of Bangladesh,
represented by its Secretary, Ministry of Social Welfare,
Bangladesh Secretariat, Ramna, Dhaka and others.

..... **Respondents.**

AND**IN THE MATTER OF :**

Alhaj Md. Mustafizur Rahman, son of late Md, Gunnu Miah, of 198/B, Biponi Bitan, Police Station: Kotwali, District: Chittagong, at present No.3 Harish Dutta Lane, Nandonkanon, Post Office: Sadar- 4000, Police Station: Kotwali, District: Chittagong.

----- **Petitioner No. 1-Applicant.**

AND**IN THE MATTER OF :**

1. District Social Service Office, Chattogram, 81 Muradpur, District- Chattogram, represented by its Deputy Director.
2. Office of Social Welfare, Urban Social Welfare Office-1, of Chattogram Sadar, Chattogram.
3. Office of Social Welfare, Urban Social Welfare Office-2, of 480, Stand Road, Sadarghat, Chattogram.
4. Department of Social Services, Government of the People's Republic of Bangladesh, represented by its Director General, of Samajseba Bhaban, E-8, B-1, Sher E Bangla Road, Agargaon Dhaka.

..... **To be Added as Respondent Nos. 10-13.**

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble Petition of the applicant most respectfully—

S H E W E T H:

1. That the petitioners filed this Writ Petition before this Hon'ble Court. Upon motion hearing the Hon'ble Court was pleased to issue Rule Nisi and pass ad-interim order of direction on 6.12.2016.
2. That inadvertently the following necessary parties were not made parties as the respondents in this case—
 - “(i) District Social Service Office, Chattogram, 81 Muradpur, District- Chattogram, represented by its Deputy Director,
 - (ii) Office of Social Welfare, Urban Social Welfare Office-1, of Chattogram Sadar, Chattogram,

- (iii) Office of Social Welfare, Urban Social Welfare Office-2, of 480, Stand Road, Sadarghat, Chattogram, and
 - (iv) Department of Social Services, Government of the People's Republic of Bangladesh, represented by its Director General, of Samajseba Bhaban, E-8, B-1, Sher E Bangla Road, Agargaon Dhaka.”
3. The aforesaid parties are necessary for proper disposal of this case but they were not made respondents at the time of filing this Writ Petition due to inadvertent mistake of the learned Advocate of the petitioner; for which the petitioners should not let suffer at the time of final adjudication of this Writ Petition. As such, the aforesaid parties may kindly be added as the respondent Nos. 10-13 in this Writ Petition for ends of justice. Their addition as the respondents shall not change the nature and character of the subject matter of this Writ Petition.

WHEREFORE, it is humbly prayed that Your Lordships would graciously be pleased to add (i) District Social Service Office, Chattogram, 81 Muradpur, District- Chattogram, represented by its Deputy Director, (ii) Office of Social Welfare, Urban Social Welfare Office-1, of Chattogram Sadar, Chattogram, (iii) Office of Social Welfare, Urban Social Welfare Office-2, of 480, Stand Road, Sadarghat, Chattogram and (iv) Department of Social Services, Government of the People's Republic of Bangladesh, represented by its Director General, of Samajseba Bhaban, E-8, B-1, Sher E Bangla Road, Agargaon Dhaka as the respondent Nos. 10-13 in this Writ Petition for effective and proper adjudication of the case and/or pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness, your petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Alhaj Md. Mustafizur Rahman, son of late Md. Gunnu Mia and Alhaj Bilkis Khatun, of 198/B, Biponi Bitan, Police Station: Kotwali, District: Chittagong, at present No.3 Harish Dutta Lane, Nandonkanon, Post Office: Sadar- 4000, Police Station: Kotwali, District: Chittagong. Death of Birth-15.04.1946 by faith- Muslim, by profession- Business, by Nationality-Bangladeshi, National ID No. 19491594122421927 do hereby solemnly affirm and say as follows:—

01. That I am the petitioner No. 1-applicant of this petition and as such acquainted with the facts and circumstances of the case and competent to swear this Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of February, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)**

WRIT PETITION NO. 12858 OF 2016.

IN THE MATTER OF:

An application for addition of party as the petitioner No.
2.

AND

IN THE MATTER OF :

Jubok Khotigrotha Jana Kallyan Society.

..... **Petitioner.**

-Versus-

Government of the People's Republic of Bangladesh,
represented by the Secretary Ministry of Finance (Bank
and Financial Institution Division), Bangladesh
Secretariat Building, Shahbag, Dhaka-1000 and others.

.....**Respondents.**

AND**IN THE MATTER OF :**

Mahamud Hossain (Mukul), son of Abdul Hai Mia and
Most. Firoza Begum, General Secretary of Jubok
Khotigrotha Jana Kallyan Society, Address: Mohisher
Chor, Post Office- Paka Mashjid, Police Station-
Madaripur Sadar, Madaripur.

----- **Applicants/to be added as the petitioner No. 2.**

To

Mr. Justice Surendra Kumar Sinha, the Hon'ble Chief Justice of Bangladesh and his companion
Justices of the Supreme Court of Bangladesh.

The humble Petition of the applicant most respectfully—

S H E W E T H :

1. That this writ petition was filed by the petitioner Jubok Khotigrotha Jana Kallyan Society through its appointed Chief Advisor Al-Haj S.A.M. Mohiuddin Khan vides a letter of authority and power of Attorney, both dated 10.10.2016. Those powers had tenure till 30.06.2017, which have already been expired. Thereafter, the petitioner society decided to cancel the aforesaid powers and release said Al Haj S.A.M. Mohiuddin Khan from representing this writ petitioner society vides a Meeting of Executive Committee on 7.07.2017, which was also informed to Al-Haj S.A.M. Mohiuddin Khan on 17.07.2017 by letter via registered post. Photocopies of the Minutes dated 7.07.2017, letter and postal receipts are annexed hereto and marked as **Annexure- "1 Series"**.
2. That in the said meeting, the petitioner also empowered the instant applicant to represent the petitioner society. Moreover, the applicant is the founder Secretary of the petitioner. As such, he has proper authority and *locus standi* to represent the petitioner society thus to be added as the petitioner No. 2 in this writ petition. Photocopies of the Memorandum of association along with re-election is annexed hereto and marked as **Annexure- "2"**.
3. That the earlier appointment and power given to said Mohiuddin Khan has already expired as stated above. Photocopies of the appointment and deed of contract are annexed hereto and marked as **Annexure- "3 Series"**.

4. That under the aforesaid circumstances, the petitioner requested said Al-Haj S.A.M. Mohiuddin Khan to give no objection certificate from his learned Advocate but he refused to do so. For that reason, finding no other alternatives, the applicant is praying for being added as a party as the petitioner No. 2 in this writ petition.
5. That it is submitted that the petitioner society is a registered society for and of the people who suffered loss due to Jubok malpractice. If the applicant is not made party in this writ petition, the victims of Jubok and the petitioner society shall suffer tremendous loss and damage, which may not be compensated in terms of money. As such, the applicant may kindly be added as the petitioner No. 2 in this writ petition for ends of justice.

WHEREFORE, it is humbly prayed that Your Lordships would graciously be pleased to add the applicant as the petitioner No. 2 in this writ petition and/or pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act kindness, the applicant as in duty bound shall ever pray.

A F F I D A V I T

I, Mahamud Hossain (Mukul), son of Abdul Hai Mia and Most. Firoza Begum, General Secretary of Jubok Khotigrotha Jana Kallyan Society, Address: Mohisher Chor, Post Office- Paka Mashjid, Police Station- Madaripur Sadar, Madaripur, age about- 53 years, by faith Muslim, by profession- Business, by Nationality- Bangladeshi being National ID No. 5415477188962, do hereby solemnly affirm and say as follows:—

01. That I am the applicant of this application and as such acquainted with the facts and circumstances of the case and competent to swear this Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shahadat Hossain)

Advocate

Membership # 6731

Hall Room No.2, Supreme

Court Bar Association Building

Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)**

COMPANY MATTER NO. 321 OF 2019.

IN THE MATTER OF:

Silver Composite Textile Mills Limited.

.....**Petitioner.**

-Versus-

The Registrar of Joint Stock Companies and Firms
(RJSC) and others

.....**Respondents.**

AFFIDAVIT-OF-COMPLIANCE ON BEHALF OF THE PETITIONER-

I, M.A.H. Salim, Managing Director-shareholder of the Company, of the petitioner company, son of Belayet Hossain and Majeda Begum, of Silver Tower, 17th Floor, 52 Gulshan Avenue, Gulshan, Dhaka and House No. 1, Road No. 9, Baridhara, Dhaka, permanent address: House No. 01, Road- Baridhara, Post Office- Gulshan Model Town, Gulshan, Dhaka Uttar City Corporation, Dhaka, age about- 65, by Faith- Muslim, by occupation- business, a Bangladeshi citizen having National ID No. 3287246031, do hereby solemnly affirm and say as follows:—

01. That I am the Managing Director of the petitioner Company and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.
02. That the petitioner filed this company matter under section 228 and 229 of the Companies Act, 1994 for reconstruction of the same by way of demerging/splitting-up into 2 (two) other companies with the permission of this Hon'ble Court.
03. That upon hearing the petitioner the Hon'ble Court was pleased to admit the application vides Order dated 17.12.2019. Furthermore, the Hon'ble Court directed it to comply with some formalities and directions. In compliance therewith, on 24.12.2019 the petitioner served notices upon all the members for holding meeting with them mentioning the time, place and agenda, and accordingly meeting was held on 5.01.2020. The petitioner also served notices to the concerned banks who are the respondent Nos. 2-5 in this company matter through registered post, and they received the notices on 1.01.2020 and on 2.01.2020. Furthermore, the petitioner published necessary notices in the prescribed newspapers i.e. Manabjamin at page No. 5 and the daily Sun at page No. 4, both dated 3.01.2020, and the petitioner has also made the copy of the proposed scheme of reconstruction available in the registered office for inspection by all concerned during office hours. Copies of the notice dated 24.12.2019, minutes dated 5.01.2020, notice dated

1.01.2020 to IFIC Bank, notice dated 1.01.2020 to One Bank, notice dated 1.01.2020 to Mercantile Bank, receipt of A/D post and paper publications both dated 3.01.2020 are annexed hereto and marked as **Annexure- “G, G-1, G-2, G-3, G-4, G-5, G-6 and G-7”**.

04. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon’ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 3217 OF 2019.

IN THE MATTER OF :

An application on behalf of the respondent No. 6 for vacating the Order of status-quo passed by this Hon’ble Court in this Writ Petition on 24.07.2019 in respect of possession and position of the scheduled property in question, subsequently extended on 2.02.2020.

AND**IN THE MATTER OF :**

Golam Mohiuddin Hassan and others.

..... **Petitioners.**

–VERSUS –

Bangladesh, represented by the Secretary, Ministry of Local Government, Rural Development and Co-operatives, Bangladesh Secretariat, Secretariat Building, Ramna, Dhaka and others

..... **Respondents.**

AND**IN THE MATTER OF :**

The Cox's Bazar Central Co-operatives Bank Limited, represented by its Officer-in-Charge, Cox's Bazar.

..... **Respondent No. 6-Applicant.**

To

Mr. Justice Syed Mahmud Hossain, the Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble Petition of the applicant most respectfully—

SHEWETH :

1. That the petitioners filed this writ petition for direction to be issued upon the respondents Nos. 3-4 to regulate the affairs of the respondent No. 6 i.e. the Cox's bazaar Central Co-operatives Bank Limited ["Bank"] in connection with the affairs of the Bank vis-à-vis the scheduled property and the livelihood of the petitioners in accordance with law and also for the issuance of a direction upon the respondents Nos. 3-5 to restrain the respondent No. 6 i.e. The Cox's Bazar Central Co-operatives Bank Limited ["Bank"] from demolishing the building/shops shown in the schedule/evicting the petitioners from the scheduled property in which they are running their businesses for earning bread and butter upon considering their representations dated 05.03.2019 favourably [Annexure- F-5 at page- 105 to 107].
2. That upon hearing the petitioners, the Hon'ble Court was pleased to issue Rule Nisi, direct the parties to maintain status quo in respect of possession and position in respect of the scheduled property and also direct the respondent No. 6 to dispose of the petitioners' application dated 4.09.2016 (Annexure- H) within 3 (three) months from the date positively. The order of status quo was granted on 24.07.2019 and the same subsequently extended on 2.01.2020 for a period of one month more. Now, the case is pending for hearing before this Hon'ble Court.

3. That this deponent is the officer-in-charge of the respondent No. 6 and he is duly appointed by the Joint-Registrar, Divisional Co-operative Department, Chattogram vides letters dated 6.04.2017 and 12.04.2017 and minutes dated 10.09.2019. Photocopies of the letters dated 6.04.2017, 12.04.2017 and board resolution dated 10.09.2019 are annexed hereto and marked as **Annexure- “1, 2 and 3”**.
4. That it is stated that the market in question was established in the year 1984 and the same was declared risky by several authorities concerned including the Executive Engineer, Cox’s Bazar Public Works Department vide by letter dated 8.02.2011, 10.03.2017 and many others. The market authority took resolutions for several times about construction of a new market and the petitioners are aware of this fact. But suppressing all the facts, the petitioners filed this Writ Petition. Photocopies of letter dated 8.02.2011, 10.03.2017 and resolutions are annexed hereto and marked as **Annexure - “3, 4 and 5”**.
5. That upon the concurrent decision from all the authorities concerned, the market authority decided to construct a new market building in the relevant premise. In this connection recommendation by the Joint Registrar, Divisional Co-operative Society Department, Chottogram was made on 14.03.2018, 07.05.2018, 16.08.2018, approval was given on 16.08.2018, by 20.09.2018 and also by the other superior officer vide letter dated 01.10.2018 and 04.11.2018. Photocopies of letter dated 14.03.2018, 07.05.2018, 16.08.2018, 16.08.2018, 20.09.2018 01.10.2018 and 04.11.2018 are annexed hereto and marked as **Annexures - “6, 7, 8, 9, 10, 11 and 12”**.
6. That on the basis of the allegation made by the petitioners, the said Joint Registrar by serving proper notices to all concerned organized a hearing, and upon hearing the same the Joint Registrar held negative. Photocopy of the notice dated 10.03.2019, 31.03.2019 and resolution dated 30.05.2019 are annexed hereto and marked as **Annexure – “13, 14 and 15”**.
7. That the market authority informed all the superior authorities concerned including the petitioners by letter dated 16.05.2019 and they were also called in a general meeting, but the petitioners attend the same. It is assured by the market authority that no one will be deprived from getting allotment of the new market building and during the period of construction, an alternative arrangement for the petitioners can be made if they are ready to co-operate but the petitioners did not co-operate with the market authority at any stage. For ensuring safe, secured and healthy environment for the shop owners, customers, workers and all surrounding concerns it becomes undeniable necessity to construct new buildings in the market with all modern facilities in according with the time and demand. Photocopies of the letter dated 16.05.2019, 15.09.2019, 15.09.2019 and 24.12.2019 are annexed hereto and marked as **Annexures – “16, 17, 18 and 19”**.
8. That it pertinent to mention that the reports about broken and deteriorate condition of the market have been published so widely that the market has already reported as dangerous, risky and abandoned. If any person including the petitioner would face any adverse consequence (should not be) due to the vulnerable and broken condition of the market, and if the market building and roof would meet sudden fall due to natural disaster or force majeure situation, then the respondents should not be held responsible. Photocopies of few reports are annexed hereto and marked as **Annexures – “20”**.

9. That it is submitted that it is stated by the petitioners that before issuance the impugned order in question, no notices or meetings held with them by the respondents which is not true at all, because before issuance such order in question, several notices were served, meetings were held, paper publications were made for couple of months and years. The petitioners attended those meetings too and they are very aware of this issue of deterioration and broken condition of the building. This matter is going on between the parties for more than 10 (ten) years. Therefore, there arises no question of non-speaking order. It is absolutely a false contention from the part of the petitioners, and as such the order of status quo is liable to be vacated for ends of justice.
10. That it is submitted that the petitioners have no locus standi to file the instant writ petition because they are the monthly evictable tenants. In fact, the petitioners are merely the tenants on monthly rental basis. The Deeds are so past in nature and at the immeasurable lesser cost @ Tk. 500 with condition to increase Tk. 20 per year. This is totally out of the time and context considering the present perspective. It is clearly stated in the Deeds that the petitioners are evictable and they are the monthly tenants. In fact, some of the petitioners are not using the shop for and by themselves; they have given sub-let and recovering high rent from the sub-tenants. Only for taking this benefit abusing the earlier deeds and the process of the court, the petitioners are taking disadvantage. As such, the Rule is liable to be discharged and order of status quo is liable to be vacated for ends of justice.
11. That it is submitted that the management of the respondent No. 6 has been trying hard for about last 10 (ten) years with petitioners who never co-operated with the management for constructing a modern building which will be according to the time, necessity, market standard and quality. As such, the order of status quo is liable to be vacated for ends of justice.
12. That it is submitted that the contents of the writ petition are kinds of admission from the part of the petitioner about the broken condition of the building, and the market authority is trying for a long period of time to convince the petitioners for construction of the new building in the proposed manner. The market authority has no intention to deprive the petitioners in any way and they will be treated in accordance with law. As such, the order of status quo is liable to be vacated for ends of justice.
13. That it is submitted that this writ petition is filed with malafide intention on fictitious ground for the purpose of frustrating and process of development, because the respondent authority wants to make a full fledged commercial market building in the premise in question accommodating all modern facilities and accessories to meet the demand of local people, visitors, tourist and also in consistent with the surrounding environment and buildings. As such, the order of status quo is liable to be vacated for ends of justice.
14. That under the circumstances the Rule is liable to be discharged and the Order of status quo is liable to be vacated for ends of justice.
15. That the petitioner craves leave of the Hon'ble Court to swear affidavit of this writ petition with the photocopies of the annexures, original of which are remaining of the office of the respondents. The deponent assures that the contents of the annexures are true and genuine and the learned Advocate of the deponent has duly attested those papers.

WHEREFORE, it is humbly prayed that Your Lordships would graciously be pleased to vacate the Order of status-quo passed by this Hon'ble Court in this Writ Petition on 24.07.2019 in respect of possession and position of the scheduled property in question, subsequently extended on 2.02.2020, and/ or pass such other or further order or orders as to your Lordships may deem fit and proper.

And for this act of kindness, your petitioners as in duty bound shall ever pray.

A F F I D A V I T

I, Abu Moksud, Father's name: Late Shafiqur Rahman, Mother's name: Late Firoza Begam, date of birth: 01.01.1962 address Holding: Ayesha Villa Road: Uttar Rumaliar Chora Poshtim, post office: Cox Bazar - 4700, Cox Bazar Pouroshabha, Cox Bazar Sadar, Coz Bazar, age about- 57 years old years, by faith - Muslim, by profession- Service, by nationality- Bangladeshi, National ID No. 2222405389737 do hereby solemnly affirm and say as follows:—

01. That I am the respondent No. 6-applicant in this case and as such fully acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of February, 2020 at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT: DHAKA.
IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

CRIMINAL MISCELLANEOUS CASE NO. 21569 OF 2010

IN THE MATTER OF:

An application for re-constitution of the Court file for this Hon'ble Court with the duplicate photocopies of the office file of the petitioner.

AND

IN THE MATTER OF:

Mrs. Khushnood Asghar Lobby and another.

.... **Accused-Petitioners.**

(On Bail)

-V E R S U S-

The State

.... **Opposite Party.**

AND

IN THE MATTER OF:

Mrs. Khushnood Asghar Lobby, wife of Ali Asghar Lobby, of Yousuf Manzil, Mirzapur, Police Station-Kotwali, District- Khulna, at present- House No. 42/A, Road No. 42, Gulshan-2, Dhaka.

.... **Accused-Petitioner-Applicant.**

(On Bail)

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion justices of the said Hon'ble Court.

The humble petition on behalf of the applicant most respectfully—

S H E W E T H:

1. That the petitioner filed this application for quashing of proceeding of Gulshan P.S. Case No. 45 dated 11.03.2007 corresponding to G.R. Case No. 182 of under sections 143/447/448/379/427/506 of the Penal Code, now pending in the Court of learned Metropolitan Magistrate, Dhaka.

2. That after hearing the parties and perusing the documents, a Division Bench of this Hon'ble High Court Division was pleased to issue Rule and grant stay vide order dated 20.07.2010 for a period of 6 (six) months in the following manner—

“Let a Rule be issued calling upon the opposite party to show cause as to why the proceeding of Gulshan P.S. case No. 45 dated 11.03.2017 corresponding to G.R. No. 182 of 2007 under sections 143/447/448/379/427/506 of the Penal Code now pending in the court of Metropolitan Magistrate, Dhaka should not be quashed and/or such other or further order or orders passed as to this court may seem fit and proper.

Pending hearing of the Rule, let the proceeding of Gulshan P.S. case No. 45 dated 11.3.2007 corresponding to G.R. No. 182 of 2007 under section 143/447/448/379/427/506 of the Penal Code now pending in the court of Metropolitan Magistrate, Dhaka be stayed for a period of 6 (six) months from date so far as it relates to the accused petitioners.

The Rule is made returnable within 4 (four) weeks from date.”

3. That said order of ad-interim stay was extended time to time, and lastly on 11.07.2018 for a period of 1(one) year. The matter was also fixed for hearing before this Hon'ble Court by the same Order. Photocopies of the first Order dated 20.07.2010 and last Order dated 11.07.2018 are annexed hereto and marked as **Annexure- “1 and 2”**.
4. That before expiry of the said order of stay, the learned Advocate for the petitioner submitted mention slip for extension of the said Order, and as accordingly the matter is coming in the daily cause list under the “As to be Mentioned Column”, but due to lapse of the Court file, the petitioner could not get the order extended. The learned Advocate mentioned this matter before this Hon'ble Court. The learned Advocate for the petitioner also submitted an application on 2.01.2020 before the Registrar General of Supreme Court of Bangladesh for recovery of the Court file, and also mentioned this matter before this Hon'ble Court for a couple of times, and also attempted all the possible recourses for recovery of the file but failed to do so. The Hon'ble Court was also pleased to direct the concerned section verbally for recovering the file, but the same met with no success. All the attempts went into vain. Copy of the said application dated 2.01.2020 is annexed hereto and marked as Annexure- “3”.
5. That therefore, finding no other alternative, the petitioner humbly begs before this Hon'ble Court for reconstitution of the office file for the Hon'ble Court with the duplicate photocopies of the office file of the petitioner. Photocopies of the entire file of the petitioner is annexed hereto and marked as **Annexure- “4”**.
6. That it is stated that the learned Advocate undertakes that the photocopies are the true and correct reflection of the original copies of the Court file submitted before this Hon'ble Court.
7. That it is submitted that if the said ad-interim Order is not extended, the petitioner-applicant shall face irreparable loss and injury though it has no fault or negligence. As such, the said ad-interim Order may kindly be extended for ends of justice. For that reason, the file of this Hon'ble Court may kindly be reconstituted with the photocopies of the office file of the petitioner.

8. That the petitioner craves the leave of the Hon'ble Court to file this application with the photocopies of the annexures, original of which are lying with the Court record. That the photocopies of the annexures are the true reflection of the original one and the learned Advocate for the petitioners duly attested those papers.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to allow this application for re-constitution of the Court file for the Hon'ble Court with the duplicate photocopies of the office file of the petitioner and thereby pass necessary direction to the concerned Section for reconstitution of the file; and/ or pass such other or further order or orders as your Lordships may deem fit and proper;

And for this act of kindness the accused-petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Md. Alamin, son of Md. Raisuddin, of House No. 19, Road No. 1, BEL Tower, Level-7B, Dhanmondi R/A, Dhaka, aged about- 36, by faith Muslim, by profession- Service, by Nationality- Bangladeshi being National ID No. do hereby solemnly affirm and say as follows—

01. That I am the *tadbirker* of this case being maternal cousin of the accused-petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office,

Advocate

Solemnly affirmed before me by said deponent at the Supreme Court premises, Dhaka on this theth day of, 2020 at A.M./P.M.

DEPONENT

The deponent is known to me and identified by me.

Advocate
Membership #
Hall Room No. 2, Supreme
Court Bar Association building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 12926 OF 2019.

IN THE MATTER OF:

An application for correction of the name of the petitioner in writ petition and Rule issuing Order dated 26.11.2019 passed by this Hon'ble Court by deleting the words "(Unit- 2)" from its name.

AND

IN THE MATTER OF:

M/s. Scandex Knitwear Ltd. (Unit-2).

..... **Petitioner.**

-VERSUS-

Government of the People's Republic of Bangladesh, represented by its Secretary, Ministry of Finance, Bangladesh Secretariat, Dhaka and others.

..... **Respondents.**

AND

IN THE MATTER OF:

M/s. Scandex Knitwear Ltd. (Unit-2), represented by its Managing Director U. M. Ashek, of Plot No. 42-51, Adamjee Export Processing Zone (AEPZ), Shiddhirganj, Narayanganj.

..... **Petitioner-Applicant.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble Petition of the applicant most respectfully—

S H E W E T H:

1. That the petitioner filed this writ petition challenging the impugned letter being No. বিআরপিডি(পি-১)/৬৬১/১৩(চ)/২০১৯-৭৫৭১, তারিখঃ সেপ্টেম্বর ২৯, ২০১৯ issued by the respondent No. 2 under the signature of the respondent No. 4 whimsically and arbitrarily re-scheduling the loan accounts of the petitioner in derogation of its own policy even after crediting the full amount of down-payment (Annexure- “D”). After hearing the learned Advocate for the petitioner, the Hon’ble Court was pleased to issue Rule vide Order dated 26.11.2019.
2. That at the time of drafting the writ petition the learned Advocate for the petitioner very inadvertently mentioned the name of the writ petitioner company as “M/s. Scandex Knitwear Ltd. (Unit-2)”, but in fact its correct name is “M/s. Scandex Knitwear Ltd”. It was a pure bonafide mistake of the learned Advocate of the petitioner; for which the petitioner shall not let suffer. The learned Advocate begs unconditional apology for her mistake. As such, the words “(Unit- 2)” are necessary to be deleted from its name. Hence, the name of the petitioner may kindly be corrected by deleting/removing the words “(Unit- 2)” from its name, otherwise the petitioner shall suffer irreparable loss and injury which cannot be compensated in terms of money, and the proper adjudication of this case shall be seriously prejudiced without making such corrections. As such, the aforesaid correction in the writ petition and the Rule issuing Order may kindly be allowed for ends of justice.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to pass necessary order/orders for correcting the name of the petitioner in writ petition and Rule issuing Order dated 26.11.2019 passed by this Hon’ble Court by deleting the words “(Unit- 2)” from its name for ends of justice and/ or pass such other or further order or orders as to your Lordships may deem fit and proper.

And for this act of kindness, your applicant as in duty bound shall ever pray.

A F F I D A V I T

I, U. M. Ashek, son of Abdul Hannan and Mahmuda Begum, Managing Director of M/s. Scandex Knitwear Ltd. (Unit-2), of Plot No. 42-51, Adamjee Export Processing Zone (AEPZ), Shiddhirganj, Narayanganj, permanent address: House No. 9, Road No. 3, Section No. 6, Block-B, Post Office- Mirpur-1216, Mirpur, Dhaka Uttar City Corporation, Dhaka, age about- 57 years, by faith- Muslim, by profession- Business, by Nationality-Bangladeshi, National ID No. 9552941941 do hereby solemnly affirm and say as follows:

01. That I am the Managing Director of petitioner of this Writ Petition and well-conversant with the facts of this case and competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon’ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

CIVIL REVISION NO. 2342 OF 2018.

IN THE MATTER OF:

An application for calling of the Lower Court Records
(LCR) of this case being Title Suit No. 1 of 2008 and
Title Appeal No. 70 of 2012.

AND

IN THE MATTER OF:

Abdur Rashid Master.

..... **Petitioner.**

-Versus -

Md. Shajahan, son of late Alhaj Ali Hoshen and others.

..... **Respondents.**

AND**IN THE MATTER OF:**

Abdur Rashid Master, son of late Ali Ahammed Patwary, of Village- Charilisha, Post- Kalupur, Police Station and District- Bhola.

.....**Petitioner-Applicant.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion justices of the Supreme Court of Bangladesh.

The humble petition of the applicant-petitioner most respectfully

S H E W E T H:

1. That the petitioner has filed this revision application challenging the judgment and decree dated 12.06.2018, decree signed on 24.06.2018 passed by the Additional District Judge, Bhola in Title Appeal No. 70 of 2012 allowing the appeal and thereby reversing the judgment and decree dated 12.09.2012, decree signed on 25.10.2012 passed by Joint District Judge, 1st Court, Bhola in Title Suit No. 1 of 2008.
2. That after hearing the learned Advocate for the petitioner and perusing the documents, a Division Bench of this Hon'ble Court was pleased issue Rule Nisi vide Order dated 23.07.2018 in the following terms—

“Let a Rule be issued calling upon the opposite party Nos. 1-3 to show cause as to why the impugned judgment and decree dated 12.06.2018 passed by the learned Additional District Judge, Bhola in Title Appeal No. 70 of 2012 allowing the appeal and thereby reversing the judgment and decree dated 12.09.2012 passed by the learned Joint District Judge, 1st Court, Bhola in Title Suit No. 01 of 2018 rejecting the plaint shall not be set-aside and/or such other or further order or orders passed as to this court may seem fit and proper.

Pending hearing of the Rule, let operation of the impugned judgment and decree dated 12.06.2018 be stayed for a period of 03 (three) months from date.

The Rule is made returnable within 4 (four) weeks from date.”

3. That during the pendency of this suit in trial court there was status-quo which comparatively secured peaceful possession of the parties in the suit land. The petitioner is in possession of the suit land. The trial has specific finding as to the possession of the petitioner in the suit land in clear words that—

“বিগত ১৭/১২/২০০০ ইং তারিখের দলিল মূল্যে নালিশী জমি হস্তান্তর করার কোন এখতিয়ার সামছুল হকের ছিল না বলে সুস্পষ্টরূপে প্রতীয়মান হয়। ১৭/১২/২০০০ ইং তারিখের ৬৯৯৫ নং কবলা দলিল মূলে নালিশী জমিতে ১/৪/৫ নং বাদীগনের কোন স্বত্ব স্বার্থ উপজাত হয়নি। পক্ষান্তরে, ৫ নং বিবাদী আদালত কর্তৃক ডিক্রিপ্রাপ্ত হয়েছেন। সার্বিক পর্যালোচনায় বাদীগনের নালিশী জমিতে কোন স্বত্ব স্বার্থ ও দখল নেই বলে আদালতের নিকট প্রতীয়মান হয় এবং বাদীগনের অত্র মামলা দায়েরেরও কোন কারন নেই। তাই বাদীপক্ষ অত্র মামলায় কোনরূপ প্রতিকার পাওয়ার হকদার নহে।” This finding has not been reversed by the appellate court.

4. That it is stated that for effective disposal of this case it is very much essential to call the lower court records of this case because two very important deeds and their dates of execution as well as signatures of the parties are involved in this case, which need to be examined by this Hon'ble Court. The LCR will assist this Hon'ble Court for proper adjudication of this case. Calling the LCR shall not prejudice any interest of the party rather it will serve the purposes of both the parties for fair and effective disposal of this case. As such, the Lower Court Records (LCR) may kindly be called for ends of justice.

WHEREFORE, it is most humbly prayed that Your Lordship would graciously be pleased to call the Lower Court Records (LCR) of Title Suit No. 1 of 2008 and Title Suit No. 70 of 2012 for ends of justice.

And for this act kindness, the applicant as in duty bound shall ever pray.

AFFIDAVIT

I, Md. Nura Alam, son of Abdur Rashid and Nur Jahan Begum, of House- Patwary Bari, Village-Sonadogi, Purba Char Ilisha, Post Office- Kalupur-8300, Bhola Sadar, Bhola, Date of birth- 01 January 1980, by faith Muslim, by profession- Service, by Nationality-Bangladeshi, National ID No. 19800911851408404 do hereby solemnly affirm and say as follows :

2. That I am the *tadbirker* of this case being son of the petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Shahadat Hossain)
Advocate

DEPONENT

Solemnly affirmed before me by said deponent at the Supreme Court premises, Dhaka on this the ... th day of, 2020
at A.M/P.M.

The deponent is known to me and identified by me.

(Dr. Shahadat Hossain)
Advocate
Membership # 6731,
Hall Room No. 2, Supreme
Court Bar Association,
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

Sample

DISTRICT- BAGERHAT.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

CIVIL REVISION NO. 3309 OF 2017

IN THE MATTER OF:

An application for amendment of plaint by the plaintiffs-respondents-opposite parties Nos. 1-3 under Order VI Rule 17 of the Code of Civil Procedure, 1908.

AND

IN THE MATTER OF:

Ajit Kumar Malo and others.

..... **Defendants-Appellants-Petitioners.**

- VERSUS -

Promanando Monolgi and others

..... **Plaintiffs-Respondents-Opposite Parties**

AND

IN THE MATTER OF:

Jinnat Ali Sheikh, son of late Noyan Sheikh, of Village-Jhanjhania, Police Station- Rampal within District-Bagerhat.

..... **Opposite Party No. 3-Applicant.**

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the applicants above-named most respectfully—

S H E W E T H:

1. That this is an application for amendment of plaint for amendment of plaint by the plaintiffs-respondents-opposite parties Nos. 1-3 under Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. That the plaintiffs-respondents-opposite parties filed the suit seeking the following prayers—
 “(ক) অত্র আদালতের দেঃ ১৬০/৭০ নং মোকদ্দমার ছোলে ডিক্রী যাহা ইং- ২৮/৩/৭৪ ইং হইয়াছে উহা বাতিল ও ডিক্রীরদ ও রহিত মর্মে ঘোষণা হয়।
 (খ) যাবতীয় খরচার ডিক্রী হয়।
 (গ) ন্যায়ত পিলিডিংস দৃষ্টে বাদী যে কোন প্রতিকার পাইতে পারেন তাহারও দ্বিবার আজ্ঞা হয়।”
3. That the plaintiffs-respondents-opposite party Nos. 1-3 are the owners and possessors of the Schedule land as mentioned in the plaint.
4. That at the time of filing the suit though the plaintiffs duly instructed the learned Advocate to file the suit in proper format securing all the rights and interests of the plaintiffs in respect of schedule land; however the learned Advocate only sought for declaration of the said Solee Decree as non binding, void and illegal, but did not pray for declaration of title of the plaintiffs in respect of suit land. This was his inadvertent mistake or lack of information about judicial development. For his inadvertent mistake, the plaintiffs should not let suffer. In the description of plaintiff though the learned Advocate stated about the chain of title of the plaintiffs in respect of suit land, he very inadvertently lacked to add a prayer of declaration of title in favour of the plaintiffs in respect of the suit land.
5. That under the circumstances, the plaintiffs-respondents-opposite parties are humbly praying for adding the following prayer with the earlier prayers as mentioned in paragraph 6 of the plaint—
 “(কক) বাদী নিম্ন তফসিল বর্ণিত সম্পত্তিতে বাদীর ষোলআনা স্বত্ব ও স্বার্থ আছে মর্মে ঘোষণামূলক ডিক্রি প্রদানে আজ্ঞা হয়।”
6. That the aforesaid prayer may kindly be added as (কক) after (ক) prayer portion of the plaint for ends of justice, otherwise the plaintiffs shall suffer irreparable loss and injury which may not be compensated in terms of money. The *prima facie* title of schedule land absolutely goes in favour of the plaintiffs. If they are not allowed to amend the prayer of the plaintiff, then more litigation will arise, and multiplicity of the proceeding would go on, and proper and full/complete disposal of the disputes between the parties will not meet with any end. This amendment will not change the nature and character of the suit, rather it is a legal requirement. It shall not affect the merit of the case. This is absolutely bonafide and a legal necessity. As such, this case may kindly be sent to remand for amendment of plaint for ends of justice.

WHEREFORE, it is humbly prayed that Your Lordship would be graciously pleased to allow this application for amendment of plaint filed by the plaintiffs-respondents-opposite parties Nos. 1-3 in the manner as stated above and /or pass such other or further order/ orders as your Lordships may seem fit and proper.

And for this act kindness, the applicants as in duty bound shall ever pray.

AFFIDAVIT

I,, son of, address, aged about- years, by faith Muslim, by profession- Service, by Nationality-Bangladeshi, National ID No. do hereby solemnly affirm and say as follows:

01. That I am the employee of the defendant-petitioner-applicant as tadbirkar of this case and I am acquainted with the facts and circumstances of this case and as such I am competent to swear this Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)**

COMPANY MATTER NO . 57 OF 2017**IN THE MATTER OF:**

An application for extension of an ad-interim order of
restrain or a fresh order of restrain.

AND**IN THE MATTER OF:**

Mst. Halima Khatun and others.

..... **Petitioners.**

–VERSUS –

Mohammad Ismail, Son of late Alhaj Kabir Ahmed and Halima Khatun, Permanent Address: Alhaj Kabir Sowdhagar Bari, Abdul Jalil Road, Uttar Saraipara, 12 No Word, Post Office- Custom Academy, Police Station- Pahartali, District- Chittagong.

Present Address: Kohinoor Compred & Major Flour Mills Ltd (Soudia Maida). Of DT Road, Pahartali, Chittagong and others.

..... **Respondents.**

AND**IN THE MATTER OF:**

Mst. Nasima Ahmed, wife of Sheikh Farid Ahmed, daughter of Alhaj Kabir Ahmed and Halima Khatun, Address: House- Dulamia Matabbar Bari, Village- Maddham Farhadnagar, Farhadnagar, Post Office – Farhadnagar - 3901, Feni Sadar, Feni.

..... **Petitioner No. 3-Applicant.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Supreme Court of Bangladesh.

The humble petition of the applicant above-named most respectfully—

S H E W E T H :

1. That the petitioners filed this company matter under section 43 and 233 of the Companies Act, 1994.
2. That after hearing the learned Advocate of the petitioners and perusing the documents, this Hon'ble Court was pleased to admit the application and pass an order of restrain upon the respondent No. 1 from transferring or disposing of the assets, properties and income of the respondent No. 2 company vide order dated 9.12.2017 for a period of 8 (eight) weeks which was extended time to time till 8.01.2018. But after that the learned Advocate for the petitioners failed to extend the said order due to her inadvertent mistake of recording the date of expiry of said extension till 8.01.2019 in her diary.

3. That before expiry the petitioners duly instructed the learned Advocate for extending the said ad-interim order but due to incorrect note taken by the learned Advocate for the petitioners in her diary that the said ad-interim order was passed till 8.01.2019, the learned Advocate could not take step for extending the same in time. Consequently, it became delay in extending the said ad-interim order. This incorrect note regarding extension is a pure bonafide mistake of the learned Advocate of the petitioners and she begs unconditional apology for it. Moreover, the petitioner also begs unconditional apology for this delay. If the said ad-interim Order is not extended the petitioners shall suffer irreparable loss and injury which may not be compensated in terms of money. Meanwhile, the nature and character of the subject-matter of this case has remained unchanged.
4. That it is submitted that if the said ad-interim Order is not extended, the petitioners shall face irreparable loss and injury though they have no fault or negligence. As such, the said ad-interim Order may kindly be extended for ends of justice.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to pass necessary order for extension of the *ad-interim* order of restraining passed on 9.02.2017 which was expired on in this company matter for ends of justice and /or pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act kindness, the Applicant as in duty bound shall ever pray.

A F F I D A V I T

I, Mst. Nasima Ahmed, wife of Sheikh Farid Ahmed, daughter of Alhaj Kabir Ahmed and Halima Khatun, Address: House- Dulamia Matabbar Bari, Village- Maddham Farhadnagar, Farhadnagar, Post Office – Farhadnagar - 3901, Feni Sadar, Feni, date of birth: 1.11.1978, by Faith- Muslim, by occupation- business, a Bangladesh national having national ID No. 3012925317989, do hereby solemnly affirm and say as follows:—

01. That I am the petitioner No. 3-applicant of this case and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)

Advocate

DEPONENT

The deponent is known to me
and identified by me.

Solemnly affirmed before me by
 said deponent at the Supreme
 Court premises, Dhaka on
 this theth day of, 2016
 at A.M./P.M.

(Shahadat Hossain)
 Advocate
 Membership # 6731
 Hall Room No. 2, Supreme
 Court bar Association Building
 Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
 SUPREME COURT OF BANGLADESH
 HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
 HIGH COURT DIVISION
 (SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 5717 OF 2010.

IN THE MATTER OF:

An application for correction by replacing the word
 “abandoned property” in place of “vested”/”vested and
 non-resident properties” as mentioned in paragraph Nos.
 7, 8, 11, 16, 18 and ground Nos. I, III and VI of the writ
 petition.

AND

IN THE MATTER OF:

Ghazi Shafiqul Alam Choudhury

..... **Petitioner.**

-VERSUS-

Government of the People’s Republic of Bangladesh,
 represented by the Secretary, Ministry of Land,
 Bangladesh Secretariat, Dhaka and others.

..... **Respondents.**

AND**IN THE MATTER OF:**

Ghazi Shafiqul Alam Choudhury, son of late Ghazi Siddique Hossain Choudhury of Village- Sutrapur, Police Station and District- Bogura.

..... **Petitioner-Applicant.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble Petition of the applicant most respectfully—

S H E W E T H :

1. That the writ petitioner filed this writ petition for direction upon the respondent Nos. 2-5 to release the property of Mouza- Maltinagar, Police Station- Bogra, District- Bogra of J.L. No. 116, C.S. Khatian No. 296, M.R.R. Khatian No. 381, Plot No. 92 for an area of 8472 ajutangsha of land in favour of the petitioner and two others on the basis of the judgment and decree of Other Class Suit No. 97 of 1999 of the 1st Court of Joint District Judge, Bogra after hearing the petitioner and perusing the documents, the Hon'ble High Court Division was pleased to issue Rule Nisi and direct the parties to maintain status quo in respect of possession in the land in question.
2. That at the time of drafting the writ petition the learned Advocate for the petitioner very inadvertently mentioned the property in question as “vested”/”vested and non-resident properties” in several places of the writ petition, especially in paragraph Nos. 7, 8, 11, 16, 18 and ground Nos. I, III and VI which should be corrected as “abandoned property”, because the property was enlisted in the supplementary gazette of Abandoned Property dated 23.09.1986 at Page No. 9762(143), Serial No. 11, District- Bogura, Upazila- Bogura, Mouza- Malatinagar (No. 116), Khatian No. 582, Dag No. 92, Area of Land = 0.3468 (Acre). (Annexure “M” of the Supplementary Affidavit dated 30.10.2019 of the petitioner).
3. That under the circumstances, the writ petition may kindly be corrected by replacing the word “abandoned property” in place of “vested”/”vested and non-resident properties” as mentioned in paragraph Nos. 7, 8, 11, 16, 18 and ground Nos. I, III and VI of the writ petition; otherwise the petitioner shall suffer irreparable loss and injury which cannot be compensated in terms of money, and the proper adjudication of this case shall be seriously prejudiced without making such corrections. As such, the aforesaid correction in the writ petition may kindly be allowed for ends of justice.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to pass necessary order/orders for correcting the writ petition by replacing the word “abandoned property” in place of “vested”/“vested and non-resident properties” as mentioned in paragraph Nos. 7, 8, 11, 16, 18 and ground Nos. I, III and VI of the writ petition and/ or pass such other or further order or orders as to your Lordships may deem fit and proper.

And for this act of kindness, your applicant as in duty bound shall ever pray.

A F F I D A V I T

I, Ghazi Shafiqul Alam Choudhury, son of late Ghazi Siddique Hossain Choudhury of Village- Sutrapur, Police Station and District- Bogura, aged about- 45 years, by Faith- Muslim, by profession- Doctor, a Bangladeshi national, National ID No. _____ do hereby solemnly affirm and say as follows:—

01. That I am the applicant in this case and as such fully acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon’ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

IN THE SUPREME COURT OF BANGLADESH

**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 14610 OF 2016

IN THE MATTER OF:

An application for direction upon the respondent Nos. 3-7 to dispose of the Namjari and Jomabhag Case No. 5362/(IX-I)2018-2019 of the Writ Petitioners in accordance with law.

AND

IN THE MATTER OF:

Abdus Salam and others.

..... **Petitioners.**

– VERSUS –

Government of Bangladesh, represented by its Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka and others.

..... **Respondents.**

AND

IN THE MATTER OF:

Abdus Salam, son of Khidir Ali and late Sahera Begum, of address: Tenguri, Tenguri, Post Office- Kabirkpur,- 1349, Savar, Dhaka.

..... **Writ Petitioner-Applicant.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Supreme Court of Bangladesh.

The humble petition of the applicant above-named most respectfully—

S H E W E T H :

1. That the writ petitioner-applicant filed this writ petition impugning decision of refusing to open Namjari Jomabhag Kharij (Mutation), separate Jote, corrected khatians and update land records in favour of the petitioners for the land measuring 162 decimals situated in CS & SA Khatian No. 1, CS & SA Dag No. 48, RS Khatian No. 1, RS Dag No. 65, JL CS & SA No. 523, Mouza- Tenguri, Thana (Old)- Savar, Present- Ashulia, District- Dhaka by the respondent No. 4 vide স্মারক সংখ্যা- ০৫.৪১.২৬০০.০১২.৪৬.০০৬.১৬ (আশুলিয়া)-৯৭৫(৩)(সং) তারিখ ২০/০৪/২০১৬ (Annexure- “J”) and why the respondents shall not be directed upon the respondents to open Namjari Jomabhag Kharij (Mutation), separate Jote, corrected khatians and update land records in favour of the petitioners for the land measuring 162 decimals situated in CS & SA Khatian No. 1, CS & SA Dag No. 48, RS Khatian No. 1, RS Dag No. 65, JL CS & SA No. 523, Mouza- Tenguri, Thana (Old)- Savar, Present- Ashulia, District- Dhaka.
2. That it is stated that during the pendency of this writ petition, the petitioner again applied for Namjari before the Assistant Commissioner of Land, Ashulia Revenue Circle, Savar, Dhaka under the present system i.e. through online process. So it is not possible to give the receipt copy of hardcopy of the application. However, the online application receipt is informed by the concerned through mobile number in the following manner—
 “Apnar namjari/jomavag-er abedon dakhil somponno hoyeche. Abedon No. 497784, porborti nirdesona somuho mobile message/email-e janano hobe.”
3. That against the said application, Namjari & Jomabhag Case No. 5362/(IX-I)18-19 has been initiated in the office of the respondents. In this case, again Kanongoo report was prepared. After the same, the Assistant Commissioner (Land) sent the matter to the Office of Collector. It appears from an office note of Collector Office that they were not taking any appropriate step for disposing of the case, rather they are shifting the burden from one office to another office, one side to another side. The petitioner-applicant has repeatedly visited the offices of the respondents (now many times- uncountable), but the respondents are making different excuses without showing any cogent or issuing any letter. All their activities indicate something otherwise for making them materially satisfied which is quite impossible for the petitioners who are living hand-to-mouth. The land in question is their parental property. However, the petitioner somehow collected some documents from the office of the respondents. Photocopies of those documents are annexed hereto and marked as **Annexure- “L, L-1, L-2 and L-3”**.
4. That it is pertinent to mention that in the latest BS Jarip the father’s name of the petitioners is duly recorded, but still the respondents are not opening Namjari & Jomabhag Case in the name of the petitioners showing the earlier RS and SA Khatians. Photocopy of BS Khatian is annexed hereto and marked as **Annexure- “M”**.
5. That it is submitted that the petitioners and predecessors are owning and possessing the said land for more than last 30 (thirty) years. Their chain of title has never been questioned.

Their chain of title is undisputed and continuous. The respondent Nos. 3-7 are very illegally and arbitrarily are refusing to open Namjari Jomabhag Kharij (Mutation), separate Jote and updating land records in favour of the petitioner for the aforesaid land.

6. That it is submitted that all the reports provided by all the superior authorities of Ministry of Land and Ministry of Law, Justice and Parliamentary Affairs and the Surveyor reported vide Annexure C1, K1, K2 and K3 reported in favour of opening Namjari Jomabhag Kharij (Mutation), separate Jote, khatians and updating land records in favour of the petitioner and his co-owners for the aforesaid land, but the respondent Nos. 3-7, especially respondent No. 4 very illegally and arbitrarily is not taking appropriate steps to do so.
7. That it is submitted that the title and ownership of the petitioners and predecessors in the aforesaid land has been confirmed by the verdicts of the learned courts below and the same was also confirmed by the Hon'ble Appellate Division and High Court Division. But, the respondent Nos. 3-7 very illegally and arbitrarily refused to open Namjari Jomabhag Kharij (Mutation), separate Jote, corrected khatians and updating land records in favour of the petitioner and his co-owners for the aforesaid land without any sufficient reason.
8. That it is submitted that the petitioners have tried all legal means to get mutation for their property, but the respondents are making them moving round and round. There should be an end of procedures. There should a solution. Under the circumstances, the respondent Nos. 3-7 may kindly be directed to dispose of the Namjari Jomabhag Case No. 5362/(IX-I)2018-2019 in accordance with law.
9. That it is submitted that the instant case is an ex-facie proof of arbitrary, malafide, illegal, unfair, unreasonable and biased inaction and negligence of the respondents. It has been a long period of time that the petitioners are being depriving to use/enjoy their own land exclusively due to illegal and malafide activity of the respondents. It is a clear violation of their fundamental rights. As such, the respondent Nos. 3-7 may kindly be directed to dispose of the Namjari and Jomabhag Case No. 5362/(IX-I) 2018-2019 in accordance with law.
10. That the petitioner craves leave of the Hon'ble Court to swear affidavit with photocopies of the annexures, original copies of which are remained with the office of the petitioner who shall be bound to produce original copies as per order of this Hon'ble Court.

WHEREFORE, it is humbly prayed that Your Lordships would graciously be pleased to pass necessary order for direction upon the respondent Nos. 3-7 to dispose of the Namjari and Jomabhag Case No. 5362/(IX-I)2018-2019 of the writ petitioners in accordance with law for ends of justice and /or pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act kindness, the Applicant as in duty bound shall ever pray.

AFFIDAVIT

I, Abdus Salam, son of Khidir Ali and late Chahera Begom, of Village- Tengori, Tengori, Post Office- Kabirkpur,-1349, Savar, Dhaka, aged about- 48 years, occupation – Business, by faith- Muslim, by Nationality- Bangladeshi, National ID No. 26172837323 do hereby solemnly affirm and say as follows :—

01. That I am the petitioner of this Writ Petition and well-conversant with the facts of this case and competent to swear the Affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Shahadat Hossain)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Shahadat Hossain)

Advocate

Membership # 6731

Hall Room No.2, Supreme

Court Bar Association Building

Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT: DHAKA.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)**

MEMORANDUM OF APPEAL FROM ORIGINAL DECREE

FIRST APPEAL NO. 25 OF 2019
FIRST APPEAL TENDER NO. 435 OF 2018

IN THE MATTER OF:

An application for permission to make Paper Book ready outside the Court at the cost of the plaintiff-respondent No. 7-applicant.

AND

IN THE MATTER OF:

Government of the People's Republic of Bangladesh, represented by the Deputy Commissioner, Dhaka and others.

.....Defendants-Appellants.

-Versus-

Tauhid Ziauddin, son of late Abu Yusuf Md. Ziauddin, of Village 145 No. Shantinagor, Police Station-Motijheel, District- Dhaka and others.

.....Plaintiffs-Respondents.

AND

IN THE MATTER OF:

Habibur Rahman, Director, Eastern Housing Limited, 125/A, Motijheel Commercial Area, Police Station-Motijheel, Dhaka. Power of Attorney on behalf of No. 1-6-Plaintiffs through Registered power of Attorney No. 2664 dated 13.07.2000 and registered power of Attorney No. 451 dated 04.02.2003.

.....Plaintiff-Respondent No. 7-Applicant.

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the applicant above-named most respectfully—

S H E W E T H:

1. That the appellant filed this appeal causing 2553 days delay which was condoned on 3.12.2018 by this Hon'ble Court and accordingly the appeal was registered. The lower court record (LCR) has already come with the record of this appeal.
2. That under the circumstances, the applicant wants to make the necessary copies of Paper Book at its own cost and endeavor outside court, which is highly necessary for early disposal of this appeal. Therefore, the applicant may kindly be allowed to make the Paper Book ready outside court at its own cost and endeavor for ends of justice and for expediting the adjudication of this appeal.

WHEREFORE, it is most humbly prayed that Your Lordships would graciously be pleased to allow the plaintiff-respondent No. 7-applicant to make necessary copies of Paper Book ready outside the Court at the cost of the applicant for proper adjudication of this appeal for ends of justice and/or pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness the applicant as in duty bound shall every pray.

A F F I D A V I T

I, Habibur Rahman, son of late Muklesur Rahman and Asiya Akhtar Rahman, Senior Executive Director, Eastern Housing Limited, Islam Chamber, 125/A, Motijheel C/A, Dhaka-1000 and 3/A, Purana Paltan, Topkana Road, 1/201, Eastern Iden, P.S. Shahbagh, Dhaka-1000, aged about- 65, by faith- Muslim, by profession- Private Service, by Nationality- Bangladeshi, National ID No. 2697556384314, do hereby solemnly affirm and say as follows:

01. That I am the Senior Executive Director of the said Company and petitioner of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shahadat Hossain)

Advocate

Membership # 6731

Hall Room No.2, Supreme

Court Bar Association Building

Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)**

COMPANY MATTER NO . 333 OF 2017

IN THE MATTER OF:

An application for transmission of shares of late Dr.
M.A. Zaman @ M. Akhteruz Zaman in favour of his
successors by rectifying the share register of the
respondent No. 1 company.

AND

IN THE MATTER OF:

Moslema Begum and others.

..... **Petitioners.**

–VERSUS –

Metropolitan Medical Centre Limited, Reg No. C-6194,
Reg Date: 14.06.1978, Address: Mohakhali, Dhaka,
represented by its Managing Director Dr. Mostafizur
Rahman and others.

..... **Respondents.**

AND**IN THE MATTER OF:**

Masum Hasan, son of A.K.M. Moslehuddin and Begum
Rokeya, Permanent Address: House No. 68/6, Road No.
Khairunnessa Road, Jhigatala, Post Office- Jhigatala-
1209, Dhanmondi, Dhaka South City Corporation,
Dhaka.

..... **Petitioner No. 5-Applicant.**

To,

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion
Justices of the said Hon'ble Supreme Court of Bangladesh.

The humble petition of the applicant most respectfully—

S H E W E T H :

1. That the petitioners filed this company matter under section 43 and 233 of the Companies Act, 1994. The application was admitted on 19.11.2017 by this Hon'ble Court.
2. That one of the shareholders of the respondent No. 1 company namely Dr. M.A. Zaman @ M. Akhteruz Zaman holding total 25,978 (ordinary share value @ Tk. 100, in total Tk. 25,97,800/-) died on 19.07.2016. Thereafter, his following successors on 13.08.2017 applied for the succession certified which was allowed in Succession Case No. 1031 of 2017 vide Order dated 28.11.2017 by the learned Joint District Judge, 3rd Court, Dhaka in the following manner—

Name of successors	Percentage of succession	Number of shares
Sabrina Zaman (daughter) –Petitioner No. 3	7/24	7576.9167
Moushumi Zaman (daughter)	7/24	7576.9167
Dr. Tazreen Zaman (daughter)	7/24	7576.9167
Moslema Begum (wife)- Petitioner No. 1	1/8	3,24,725

Photocopy of the succession certificate dated 13.08.2017 is annexed hereto and marked as **Annexure- “I”**.

3. That though said M.A. Zaman died on 19.07.2016 and it is reflected on Schedule X of the respondent No. 1 company, however the company has yet to update the share register of the

company by transmission of shares of the said successors of M.A. Zaman. This is causing tremendous loss and injury to the interest of the said successors. Out of said 4 (four) successors Ms. Sabrina Zaman and Ms. Moslema Begum are the parties in this company matter as the petitioner Nos. 3 and 1, respectively. They requested the respondents to rectify the share register of the company by way of transmission of said shares, but the respondents paid no heed thereto. Therefore, the respondents may kindly be directed to rectify the share register of the respondent No. 1 company by way of substitution of said shares in favour of the successors of late M.A. Zaman.

4. That for filing this company matter and to carry out all necessary formalities and appearing before the Hon'ble Court, Affidavit Commissioner, signing Wokalatnama, petitions and other documents, the petitioners have executed a Power of Attorney in favor of Masum Hasan. Copy of the Power of Attorney has already been annexed in the original company matter.
5. That the petitioners crave leaves of the Hon'ble Court to file this petition with the photocopies of Annexure- "I" as the original is lying with the petitioners and may be produced as per the direction of this Hon'ble Court.

WHEREFORE, it is humbly prayed that your Lordships would graciously be pleased to direct the respondents to rectify the share register of the respondent No. 1 company by way of substitution of said shares in favour of the successors of late M.A. Zaman in the manner as mentioned in paragraph No. 2 of this application for ends of justice and/or pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act kindness, the Applicant as in duty bound shall ever pray.

A F F I D A V I T

I, Masum Hasan, son of A.K.M. Moslehuddin and Begum Rokeya, Permanent Address: House No. 68/6, Road No. Khairunnessa Road, Jhigatala, Post Office- Jhigatala-1209, Dhanmondi, Dhaka South City Corporation, Dhaka, Date of Birth- 02 January, 1959, by Faith- Muslim, by occupation- Business, a Bangladeshi citizen having National ID No. 9560706799, do hereby solemnly affirm as follows:—

01. That I am the petitioner No. 5-applicant of this company matter as well as the attorney of the petitioner Nos. 1-4 and 6-7 and I am acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit on behalf of the petitioner.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Zarif Kabir Alam)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me and
identified by me.

(Zarif Kabir Alam)
Advocate
Membership # 3114
Hall Room No. 2, Supreme
Court Bar Association Building
Mobile: 01711-404339

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

DISTRICT: CHATTOGRAM.
**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. 2612 OF 2017.

IN THE MATTER OF:

An application for releasing the seized vehicle/microbus
under the custody of the petitioner.

AND

IN THE MATTER OF:

Nitol Motors Limited

.....**Revisional Applicant –Petitioner.**

VERSUS

The State

.....**Opposite
Party.****AND****IN THE MATTER OF:**

Nitol Motors Limited, of Nitol Niloy Centre, 71, Mohakhali C/A, Dhaka-1212, represented by its Managing Director through his Attorney SM Afizul Islam, son of Md. Abdul Aziz Sardar, Senior Law Officer, Nitol Motors Limited.

..... **Applicant.**

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the Supreme Court of Bangladesh.

The humble petition on behalf of the petitioner most respectfully.

SHEWETH:

1. That this is an application for releasing the microbus in an application pending under section 561A of the Code of Criminal Procedure, 1898 impugning the order No. 30 dated 14.11.2017 and the judgment and order dated 25.09.2017 so far as relating to confiscating the seized van in favor of the State passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Chittagong in Sessions Case No. 1756 of 2016 arising out of Kotwali Police Station Case No. 25 dated 12.01.2016 corresponding to GR No. 25 of 2016 under section 19(1) Table Serial No. 9(kha) of Madak Drabya Niantron Ain, 1990.
2. That the prosecution case in brief is that on 16.05.2018, one S.I. Obaidul Kabir, Bomb Disposal Unit, Special Action Group Counter Terrorism and Trans National Crime, DMP as informant lodged the aforesaid case against the revisional applicant-petitioner wife of accused-petitioner No. 2 and other accused-persons alleging *inter alia* that on the basis of secrete information, during the course of duty at Rayerbag Titas Gas Road, under the Police Station Kadamtali the informant and his other companion forces signaled a private blue colour microbus Toyota Noah Voxy being Registration No. Dhaka Metro Cha-11-7365, Chasis No. AZR 60-0039318, Engine No. IAZ-4164883, manufactured by Toyota in the year 2002, it's driver accused No. 2 namely Md. Ripon Miah drove away the said microbus. Thereafter, the informant and his companion forces seized/arrested. Thereafter, the informant has searched the said microbus and recovered 8000+1000+1000 total 10,000 pieces yaba tablets. Accordingly, the informant has arrested the accused-petitioner and other accused-persons and seized those 10,000 pieces yaba tablets weighted @ about 900

gram and valued @ Tk. 20,00,000/- on the basis of a seizure list prepared by the informant in presence of the witnesses, wherein the informant also signed there. Upon interrogation, the accused-petitioner and other accused persons disclosed their aforesaid names and addresses as mentioned in the First Information Report (FIR). By that way, the accused-petitioner and other accused persons have committed offence under Table 9(Kha)/25 of Section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০.

3. That subsequently on 17.05.2018, the accused No. 2 and two other accused-person were forwarded by police before the Court of learned Chief Metropolitan Magistrate, Dhaka with a prayer for 10(ten) days police remand. Upon hearing, the learned Metropolitan Magistrate, Dhaka was pleased to allow 1 (one) day police remand against them.
4. That accordingly, the revisional applicant–petitioner wife of FIR named accused No.2 filed an application for releasing the said blue colour microbus being No. Dhaka Metro Cha-11-7365 in favour of her jimmah in the court of learned Chief Metropolitan Magistrate, Dhaka.
5. That after hearing the said application the learned court of Chief Metropolitan Magistrate, Dhaka was rejected the same.
6. That being aggrieved and dissatisfied of the said order dated 10.06.2018 passed by learned court of Chief Metropolitan Magistrate, Dhaka the revisional applicant–petitioner- wife of FIR named accused No.2 filed an application under section 435/439A of the Criminal Procedure, 1898 in the Court of learned Metropolitan Sessions Judge, Dhaka.
7. That after hearing the said application the learned court of Metropolitan Sessions Judge, Dhaka was summarily rejected same vide order dated 21.06.2018.
8. That it is stated that the petitioner is the wife of accused Ripon Mia, the owner of the seized car. As such, she got the locus standi being legally entitled to get the custody of the seized car. The seized vehicle is the only earning means of the family of the petitioner. The petitioner, her children and parents-in-law are suffering a lot and passing miserable life without having any income.
9. That it is submitted that the learned Sessions Court committed an error of law holding that the petitioner has no locus standi to file the application for releasing the seized car. The scope of section 517 of the Code of Criminal Procedure, 1898 is very wide. The seized item/article can be released to anyone ‘entitled thereto’. The petitioner being the wife of the accused Ripon, the owner of the car is legally entitled to the seized car. As such, the seized microbus/car may kindly be released under the custody of the petitioner for ends of justice.
10. That it is stated that the petitioner is the wife of accused Ripon Mia, the owner of the seized car. As such, she got the locus standi being legally entitled to get the custody of the seized/microbus car. The seized vehicle is the only earning means of the family of the petitioner. The petitioner, her children and parents-in-law are suffering a lot and passing miserable life without having any income. Hence, the seized microbus/car may kindly be released under the custody of the petitioner for ends of justice.
11. That it is submitted that the husband of the petitioner is the lawful owner of the seized van. He has all necessary permissions and licenses for driving and using the seized van. The petitioner applied for several times before the trial court the custody of the seized van

which was the means of income of the petitioner and his family. She invested a lot in the said van. It is her legitimate expectation to get the custody of the said van which is now negligently and uselessly lying with the custody of the Police. It is resulting and benefiting none. As such, the applicant-petitioner is legally entitled to get the custody of said van, but the trial court below failed to appreciate this point of law. Hence, the seized microbus/car may kindly be released under the custody of the petitioner for ends of justice.

12. That it is submitted that the ownership of the petitioner's husband i.e. accused no. 2 Ripon Mia of the said vehicle is admitted and the same was not disputed by the trial court in the order. Under this circumstances, after admitting the ownership of the petitioner's husband for the seized vehicle keeping the same seized in favor of the State is absolutely illegal, malafide, arbitrarily and of no legal effect. As such, the applicant-petitioner is legally entitled to get the custody of said vehicle, but the trial court below failed to appreciate this point of law. Hence, the seized microbus/car may kindly be released under the custody of the petitioner for ends of justice.
13. That it is submitted that sections 516 and 517 empowers the trial court to deliver the said custody of the seized goods in favour of the owner even before conclusion of trial; but the trial court below miserably failed to appreciate this point of law and very illegally and arbitrarily confiscated the said vehicle in favor of State. Hence, the seized microbus/car may kindly be released under the custody of the petitioner for ends of justice.
14. That it is submitted that the provisions of Sections 33 and 34 of Madok Drabba Niyontron Ain, 1990 do not allow to keep the seized item keeping under the custody of the government where owner can be duly indentified and the seized item is not a Madok under the definition of the Ai, 1990. But both the courts below failed to appreciate this point of law. Hence, the seized microbus/car may kindly be released under the custody of the petitioner for ends of justice.
15. That it is submitted that the jurisdiction of section 516A and 517 are very wide and the court should exercise for the proper use of the seized item. For ready reference section 516A and 517 are quoted below—

“516A- When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

517- (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) When High Court Division or a Court of Sessions makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court

may direct that the order be carried into effect by the [Chief Metropolitan Magistrate or] District Magistrate.

(3) When an order is made under this section such order shall not, except where the property is livestock or subject to, speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.

Explanation : In this section the term “property” includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.”

16. That the petitioner humbly seeks the kind jurisdiction of this Hon’ble Court for getting release of the seized vehicle in any terms and conditions as the Hon’ble Court deems fit and proper and also with any undertaking as the Lordships pleases in accordance with law. The value of the seized vehicle is about Tk. 10 (ten) Lac, and the petitioner undertakes to secure bond against it. Hence, the seized microbus/vehicle may kindly be released under the custody of the petitioner for ends of justice.

WHEREFORE, it is most humbly prayed that your Lordships would graciously be pleased to release the seized vehicle being Blue Color Toyota Noah Voxy Microbus, Registration No. Dhaka Metro Cha-11-7365 in Kadamtoli Police Station Case No. 38 dated 16.05.2018 corresponding to G.R. Case No. 321 of 2018 under section 19(1) Table Serial No. 9(kha) of Madak Drabya Niantron Ain, 1990, now pending in the Court of learned Chief Metropolitan Magistrate, Dhaka for ends of justice and/ or pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness, the accused-petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Santona, daughter of Milon and Tamanna, of London Market, Middle Sanar Par, Khondoghosh Para, Post Office- Sanar Par-1361, Narayangonj Sadar, Narayangonj City Corporation, Narayangonj, aged about- 22 years, by faith- Muslim, by profession- House wife by nationality- Bangladeshi, National ID No. 6455111366 do hereby solemnly affirm and say as follows:

01. That I am the revisional applicant-petitioner of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Shahadat Hossain)

Advocate

Solemnly affirmed before me this in the Supreme Court premises on th day of, 201 ..

DEPONENT

The deponent is known to me and identified by me.

(Dr. Shahadat Hossain)

Advocate

Membership No. 6731
Hall Room No. 2, Supreme Court Bar
Association, Shahbagh, Dhaka.
Mobile: 01717-041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 1499 OF 2018.

IN THE MATTER OF:

An application for discharging the Rule issued on 4.02.2018 by a Division Bench of the Hon'ble High Court Division of the Supreme Court of Bangladesh comprising of their Lordships Ms. Justice Salma Masud Chowdhury and Mr. Justice A.K.M. Zahirul Hoque.

AND**IN THE MATTER OF:**

Md. Johurul Hoque Momin

..... **Petitioner.****–VERSUS –**

Judge Artha Rin Adalat, Bogra and others.

.... **Respondents.****AND****IN THE MATTER OF:**

Prime Bank Limited, Bogra Branch, represented by is
 Manager, Mozammel Hoque, S.A.V.P of Rangpur Road,
 Borogola, Bogra.

.....**Respondent No. 2-Applicant.****-Versus-**

1. Md. Johurul Hoque Momin, son of Alhaj Narun Noby, Proprietor of M/S. Ripon Motors, of National Highway (bi-pass), Tin Matha Rail gate, Old Bogra, Police Station and District- Bogra.

.....**Opposite Party No. 1.**

2. Judge, Artha Rin Adalat, Bogra.
3. Alhaj Md. Nurun Noby, son of late Golam Maula (Guarantor-Mortgager).
4. Shireen Akhter Zumu, wife of Md. Zhurul Hoaque Momin.
5. Md. Nazrul Islam, son of Alhaj Md. Nuron Noby (Guarantor).

All of village: Seujgari, Police Station & District: Bogra.

.....**Proforma Opposite Parties.**

To

Mr. Justice Syed Mahmud Hossain, the Hon'ble Chief Justice of Supreme Court of Bangladesh
 and his companion Justices of the said Hon'ble Court.

The humble petition of the petitioner most
 respectfully—

S H E W E T H

1. That the petitioner filed the instant Writ Petition impugning the order No. 72 dated 30.10.2013 passed by the Artha Rin Adalat, Bogra in Artha Jari Case No. 01 of 2010 issued certificate under section 33(7) of the Artha Rin Adalat Ain, 2003 (Annexure D).
2. That the Rule Nisi was issued and stay granted on 04.02.2018 from a Division Bench of this Hon'ble Court comprising of their Lordships Ms. Justice Salma Masud Chowdhury and Mr. Justice A.K.M. Zahirul Hoque. It is pertinent to mention that at the time issuing Rule and passing ad-interim Order, the said Bench of the Hon'ble Court had no jurisdiction to hear and adjudicate any matter relating to bank or financial institution including Artha Rin matter.
3. That the petitioner had challenged one order passed by the learned Artha Rin Adalat under section 33(7) of the Artha Rin Adalat Ain, 2003. The Artha Rin Suit being No. 52 of 2008 was decreed exparte against the petitioner. Thereafter the applicant bank filed execution case being Artha Jari Case No. 1 of 2010. The petitioner without taking proper step against the exparte order in accordance with law and also without repaying the outstanding amount to the bank filed this Writ Petition, thus to deprive the bank from recovering the dues from the petitioner.
4. That it is stated that the petitioner is a habitual defaulter and still now he did not show positive intention to repay the outstanding dues to the bank. Without repaying the dues to the bank he is taking advantages of law to evade the repayment to the bank in different ways which ultimately causing damage to the public fund lying with the bank.
5. That it is submitted that it is a well settled principle through judicial pronouncement of our country that proceeding or order of Artha Rin Suit/Artha Execution Case cannot be challenged in Writ Petition unless there is any malice in law or fraud. But there is no such allegation of fraud or malice in law against anyone. As such, the Writ Petition is not maintainable in the eye of law. Hence, the Rule is liable to be discharged for ends of justice.
6. That it is submitted that when the Rule was issued and ad-interim order of stay was passed by the said Division Bench of this Hon'ble Court, the same had no jurisdiction to hear and adjudicate the Artha Rin Matter. As such, the Rule is liable to be discharged for ends of justice.
7. That it is submitted that the bank obtained certificate under section 33(7) of the Artha Rin Adalat Ain in accordance with law. There is no procedural flaw or lapse in the Artha Rin Suit or in the Artha Execution Case. As such, the Rule is liable to be discharged for ends of justice.
8. That it is submitted that the allegation raised by the petitioner that the plaint of the Artha Rin Suit was not sworn with affidavit is not correct at all and the same question cannot be raised at this stage. Moreover, the plaint of the Artha Rin Suit was properly sworn. As such, the Rule is liable to be discharged for ends of justice.
9. That it is submitted that it is a well settled principle of law that Writ Petition is not maintainable challenging any order or proceeding of Artha Rin Suit or Artha Execution Case. As such, the Writ Petition is not maintainable in the eye of law. Therefore, the Rule is liable to be discharged for ends of justice.
10. That by a letter of authority the applicant has authorized one of its officers namely Md. Kobad Hossain, son of Abul Kalam Azad, Officer, Prime Bank Limited, Legal Division,

Head Office, Adamjee Court Annex Building-2, 119-120, Motijheel C/A, Dhaka-1000 to swear affidavit on his behalf for filing application or affidavit in opposition or necessary petitions; as such the Applicant craves your Lordships kind permission to swear affidavit through the authorized person. Copy of the letter of authority is annexed hereto and marked as **Annexure- “1”**.

Wherefore, it is most humbly prayed that your Lordships would graciously be pleased to allow the application and thereby discharge the Rule issued on 4.02.2018 by a Division Bench of the Hon’ble High Court Division of the Supreme Court of Bangladesh comprising of their Lordships Ms. Justice Salma Masud Chowdhury and Mr. Justice A.K.M. Zahirul Hoque for ends of justice and/or pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness, your petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Md. Kobad Hossain, son of Abul Kalam Azad, Officer, Prime Bank Limited, Legal Division, Head Office, Adamjee Court Annex Building-2, 119-120, Motijheel C/A, Dhaka-1000, by Faith-Muslim, aged about- 35 years, by profession- Service, a Bangladeshi national, National ID No. do hereby solemnly affirm and say as follows:—

01. That I am the authorized person of the respondent No. 2-applicant of this writ petition and fully acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon’ble Court.

Prepared in my office.

(Shah Monjurul Hoque)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shah Monjurul Hoque)
Advocate
Membership # 3114
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01711-404339

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)**

F. A. NO. 537 OF 2018.
(F. A. T. NO. 949 OF 2018)

IN THE MATTER OF:

An application on behalf of the defendant-respondent-opposite party No. 4 for vacating the Order of Injunction dated 10.10.2018 passed by this Hon'ble Court.

AND

IN THE MATTER OF:

Keya Yarn Mills Ltd.

..... Plaintiff-Appellant.

-V E R S U S-

Bangladesh Bank and others.

..... Defendants-Respondents-Opposite Parties.

AND

IN THE MATTER OF:

Manager, Kawran Bazar Corporate Branch, Bangladesh Krishi Bank, 47 Kawran Bazar C/A, Dhaka.

..... Opposite Party No. 4-
Applicant.

To

Mr. Justice Syed Mahmud Hossain, the Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble Petition of the applicants above named most respectfully—

SHEWETH :

1. That the plaintiff-appellant filed this appeal being aggrieved by and dissatisfied with the impugned judgment and decree dated 20.09.2018 (decree signed on 27.09.2018) passed by the learned Joint District Judge, 5th Court, Dhaka in Title Suit No. 516 of 2018 rejecting the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

2. That in the said appeal the appellant filed an application for injunction which was allowed by the Hon'ble Court vide order dated 10.10.2018 by granting injunction against the defendants-respondents-opposite parties restraining them from reporting, publishing/circulating the name of the appellant-petitioner as a defaulter borrower in the report of the Credit Information Bureau of Bangladesh Bank for a period of Bangladesh Bank.
3. That admittedly the plaintiff-appellant is a bank loan defaulter and his name had been appearing in the CIB report for a long period of time before the said order of injunction was passed by this Hon'ble Court. For ready reference the latest loan liability position of the plaintiff-appellant is quoted below—

ক্রঃ নং	ঋণের ধরন	১১/১২/২০১৮ ভিত্তিক বর্তমান লেজার স্থিতি	মন্তব্য
০১	প্রকল্প ঋণ	১৯,০৭,৬৭,২১৯.০০	০১.০১.২০১৩ তারিখ হতে সুদ অনারোপিত অর্থাৎ সুদ আরোপ করা হয়নি।
০২	পিএডি	৩,৪০,৬৫,৭৪৩.০০	
০৩	এলটিআর	৬২৪,১১৪.০০	
	মোট	২২,৫৪,৫৭,০৭৬.০০	

Copies of a certificate provided by the applicant stating the loan liability of the plaintiff along with sanction advice and CIB report are annexed hereto and marked as **Annexure-“X Series”**.

4. That it is submitted that Article 41 of Bangladesh Bank Order, 1972 provides specific bar upon filing suits or other legal proceedings against any publication made under Chapter 4 (dealing with CIB) of the said Order. Article 41 provides as follows-
 41. (1) No suit or other legal proceedings shall lie against the Bank or any of its officers for anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40 or in pursuance of the provisions of Chapter IV.
 - (2) No suit or other legal proceedings shall lie against the Bank or any of its officers for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40, or in pursuance of the provisions of Chapter IV.
5. That it is submitted that it is a well settled principle that the name of the defaulter borrower will be published in the CIB report and the same cannot be restrained by any order of the Court. It has been decided in a series of cases that publication of the name of the defaulter in the CIB report is a matter exclusively falls between the bank and the borrower, and the same should be governed as per the provision of the relevant banking laws. Therefore, the order of injunction passed by this Hon'ble Court may kindly be vacated for ends of justice.
6. That it is submitted that because of the Order of Injunction the applicant bank is suffering irreparable loss and injury because the plaintiff-appellant is a habitual defaulter and under the shield of this Order of Injunction it is now getting opportunity for making no payment to the applicant bank. Therefore, the order of injunction passed by this Hon'ble Court may kindly be vacated for ends of justice.

7. That it is submitted that the plaintiff-appellant is a serious defaulter to the applicant bank who is suffering tremendous loss due to the order of injunction passed by this Hon'ble Court. Therefore, the order of injunction passed by this Hon'ble Court may kindly be vacated for ends of justice, otherwise the applicant bank may not be able to recover money from the plaintiff-appellant, and consequently the bank will continue to suffer tremendous loss and injury which ultimately prejudice the interests of the customers of the bank.

WHEREFORE, it is humbly prayed that Your Lordships would graciously be pleased to vacate the order of injunction passed by this Hon'ble Court vides Order dated 10.10.2018 and/ or pass such other or further order or orders as to your Lordships may deem fit and proper.

And for this act of kindness, your petitioners as in duty bound shall ever pray.

A F F I D A V I T

I, Md. Golam Mostafa, Son of Md. Abdul Mannan and Mst. Sakina, of House No. 44/J, Indira Road, Post Office: Tejgaon-1215, Tejgaon, Dhaka City Corporation, Dhaka aged about 35 years, by faith Muslim, by profession- service, by Nationality-Bangladeshi being National ID No. 2699040696079 do hereby solemnly affirm and say as follows:—

01. That I am the tadbirkar of the opposite party No. 8-applicant in this case and as such fully acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
02. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Shahadat Hossain)
Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 201
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Shahadat Hossain)
Advocate
Membership # 6731
Hall Room No.2, Supreme
Court Bar Association Building
Mobile: 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 637 OF 2020

IN THE MATTER OF

Md. Emdadul Haque.

..... **Petitioner.**

–*VERSUS*–

National Board of Revenue, Rajashwa Bhaban,
represented by its Chairman, Segunbagicha, Dhaka and
others.

..... **Respondents.**

Supplementary Affidavit on behalf of the petitioner-

I, Md. Emdadul Haque, Son of late Shamsul Haque of House No. 189/1, Road No. 5, Momtaz Mahal, Upashahar, Post Office- Sylhet-3100, Police Station- Shahporan (Rh:), District- Sylhet, aged about- 47 years, by profession- Business, by Nationality- Bangladeshi by Birth, National ID No. 4650808894 do hereby solemnly affirm and say as follows :

1. That I am the constituted attorney on behalf of the petitioner of this Writ Petition and well-conversant with the facts of this case and competent to swear the Affidavit.
2. That this supplementary affidavit has been filed to produce some relevant information before this Hon'ble Court which are necessary for proper adjudication and disposal of the writ petition.
3. That it is stated that for prompt orientation of the facts of this case, some relevant date-wise facts are quoted below—

# 28.10.2018	-	Additional Commissioner of Taxes set aside the earlier order of the DCT.
# 18.12.2018	-	Revised Return submitted by the petitioner through his tax consultant.
# 24.12.2018	-	First hearing on revised return.
		[Note : No further update or hearing given to the petitioner or his tax lawyer. No further order was ever given to the petitioner.]
####	-	Subsequently, when the learned tax lawyer met with the respondents and requested for update about whether any tax assessment order passed or not, the same met with no result.
# 17.07.2019	-	However, the learned tax consultant applied for certified copy and submitted challan. But no copy was given to him.

# 14.10.2019	-	Notice under section 143 to the Bank.
		[Note : No notice was given to the petitioner. The petitioner had no knowledge about this letter. He subsequently came to know about this through bank.]
# 29.10.2019	-	Learned tax lawyer submitted written application to the respondents stating that “নিবেদন এই যে, উপরোক্ত করদাতার নামে সম্পূর্ণ অযৌক্তিকভাবে করধার্য্য করিয়াছেন। কিন্তু করদাতাকে করাদেশ, দাবীর নোটিশ, আইটি ৩০ কোন কিছুই সরবরাহ করেন নাই। বিগত ১৫/০৭/২০১৯ ইং তারিখে সার্টিফাইড কপির জন্য আমরা করদাতার পক্ষে আপনার সাক্ষেলে আবেদন দাখিল করিয়াছিলাম। কিন্তু সার্টিফাইড কপিও আপনি দেন নাই। তদুপরি আপনি করদাতার যাবতীয় ব্যাংক হিসাব জব্দ করিয়াছেন, যাহাতে করদাতার মানহানী ঘটিয়াছে। আমি আবারো আপনাকে অনুরোধ জানাইতেছি করদাতাকে যাবতীয় কাগজ পত্রাদির সার্টিফাইড কপি প্রদান করার জন্য এবং করদাতার নামে জারীকৃত ব্যাংক হিসাব জব্দকরন প্রত্যাহার করার জন্য। অতএব, প্রার্থনা যে, অনুগ্রহপূর্বক উপরোক্ত আবেদন গ্রহন করিয়া যথাযথ কার্যক্রম গ্রহন পূর্বক করদাতাকে উচ্চতর কর্তৃপক্ষের নিকট আপীল/রিভিউ করার সুযোগ দানে বাধিত করিবেন।” It was received by the DCT on 30.10.2019.
		[Note : The respondent never replied back to this letter stating/confirming that certified copy was delivered to the petitioner or his lawyer.]
# 11.11.2019	-	Again another letter was given by the learned lawyer to the respondents for the certified copy or order or update. They received the letter, but did not give any receive copy of it.
		[Note : No subsequent update.]
###	-	Then the petitioner filed this writ petition.
# 13.02.2020	-	At 11.28 am, a phone call came from +880821729068 to the petitioner’s tax consultant asking him to visit the office of the respondents on that date. He immediately ran to the office in good faith as because call was made from a Senior Officer of the respondent office. Since he is a regular practitioner in the tax bar of Sylhet along with his father (who is a learned Advocate) for a long period of time with good reputation; therefore, as a practitioner he frequently needs to go to the office of the respondents. Getting that phone call, he went to the office of the Joint Commissioner of Taxes, Sylhet. Entering into his office, he found some of the officers were sitting there, and he was offered to sit, and subsequently he was compelled to receive the certified copy of the order back dated on 18.07.2019 basing on the application made by the tax consultant for the petitioner on 17.07.2019.
		[Note : The petitioner is humbly eager to file appeal and comply with the provisions of law. But now, due to coercive receive of certified copy on back-date, the appeal also falls time barred.]

# 4.02.2020	-	Letter submitted to the respondents along with NBR for the certified copy and update of the order of the DCT.
# 13.02.2020	-	Tax consultant informed the petitioner about coercive receive of certified copy of said assessment order.

4. That it is stated that the petitioner humbly seeks apology for any kind of bonafide mistake on his part. The petitioner is a law abiding and peace loving citizen of Bangladesh. He is a regular tax payer. He wants justice against the arbitrariness and unfair activities of the respondents. The petitioner is most humbly praying the kind intervention of this Hon'ble Court so that petitioner can file appeal and get relief in accordance with law.
5. That this supplementary affidavit may kindly be formed part of the original Writ Petition.
6. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of February, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

Advocate
Membership #
Hall Room No.2, Supreme
Court Bar Association Building
Mobile:

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**

Sample**DISTRICT: BRAHMANBARIA.****IN THE SUPREME COURT OF BANGLADESH**

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

CRIMINAL MISCELLANEOUS CASE NO. 60180 OF 2018.**IN THE MATTER OF:**

Tuta Mia

..... **Accused-Petitioner.****-Versus-**

The State.

..... **Opposite Party.****AFFIDAVIT OF FACTS ON BEHALF OF THE ACCUSED-PETITIONER-**

I, Md. Al Amin Mia, Son of Md. Salauddin and Amina Begum of Madbor Bari, Ainta Poschim, Post Office- Dhaleshwar- 1311, Police Station- Dakkhin Keranigonj, District- Dhaka, aged about 32, by faith Muslim, by profession- Business, by Nationality-Bangladeshi being National ID No. 2613843460267 do hereby solemnly affirm and say as follows—

01. That I am the *tadbirker* of this case being maternal cousin of the accused-petitioner and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That this affidavit of facts has been filed to produce some relevant information before this Hon'ble Court which are necessary for proper adjudication of this case.
03. That it is stated that the petitioner being enlarged on bail by this Hon'ble Court is regularly appearing before the learned court below and he is not misusing the privilege of bail. Next date of the case is fixed on 5.02.2020. Certified copy of the latest order sheet is annexed hereto and marked as **Annexure- "1"**.
04. That this affidavit of facts may kindly be treated as part of the substantive application filed by the petitioner under section 498 of the Code of Criminal Procedure, 1989.
05. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate

DEPONENTThe deponent is known to me
and identified by me.

Solemnly affirmed before me by
 said deponent at the Supreme
 Court premises, Dhaka on
 this theth day of, 2020
 at A.M./P.M.

 Advocate
 Membership #
 Hall Room No.2, Supreme
 Court Bar Association Building
 Mobile :

**COMMISSIONER OF AFFIDAVITS
 SUPREME COURT OF BANGLADESH
 HIGH COURT DIVISION, DHAKA**

Sample

DISTRICT- DHAKA:

**IN THE SUPREME COURT OF BANGLADESH
 HIGH COURT DIVISION
 (CRIMINAL MISCELLANEOUS JURISDICTION)**

CRIMINAL MISCELLANEOUS CASE NO. _____ OF 2019

IN THE MATTER OF:

Md. Anis Bepari, Son of late Alam Bepari and amena
 Khatun, of House No. 74, West Islambagh (Mona Hajir
 Bari) Level 5, Police Station- Chalkbazar, District-
 Dhaka.

.... Accused-Petitioner.

(On bail)

=V E R S U S=

The State and another

.... Opposite Parties.

Supplementary Affidavit on behalf of the accused-petitioner-

I, Md. Saiful islam son of Yunus Mia and Rehana Akter, of House No. 62/Ka, Road No. –
 Islamabagh West, Post Office- Posta-1211, Lalbagh, Dhaka South City Corporation, Dhaka, aged
 about- 30 years, by faith Muslim, by profession- Business, by Nationality-Bangladeshi, National
 ID No. 1909250292 do hereby solemnly affirm and say as follows :

01. That I am the brother in law of the accused-petitioner and *tadbirkar* of this case and am well conversant with the facts and circumstances of the case and competent to swear this affidavit.
02. That this supplementary affidavit has been filed to produce some relevant documents before this Hon'ble Court which are necessary for proper adjudication of this application.
03. That before the date of occurrence, the accused served divorce notice, and their divorce confirmed following all the due procedures of law. Photocopy of the talaqnama is annexed hereto and marked as **Annexure- "F"**.
04. That the place of occurrence was shown at the parental house of the complainant after divorce. It prima facie proves that the complainant filed the case being aggrieved by divorce, and no such alleged occurrence was happened in fact.
05. That the petitioner is ready to pay the dower, but he is a very poor man living hand to mouth. He is currently unemployed. Earlier he carried out small kind of business. It is not possible for him to repay the entire money at a time. He has no bank account. But he wants to repay the dowry amount. He sincerely and honestly wants to repay the dower amount with respect to the complainant. Since he is having no bank account, therefore, he kept his money to his relatives account and willing to pay money by the following cheques in following manner—

Cheque No.	Date	Amount
<u>CAH</u> <u>M</u> No. 4525559	13.02.2020	16,600/-
<u>CAH</u> <u>M</u> No. 4525560	15.03.2020	16,600/-
<u>CAH</u> <u>M</u> No. 4525561	15.04.2020	16,600/-
<u>CAH</u> <u>M</u> No. 4525562	17.05.2020	16,600/-
<u>CAH</u> <u>M</u> No. 4525563	15.06.2020	16,600/-
<u>CAH</u> <u>M</u> No. 4525564	15.07.2020	17,600/-

Photocopies of the cheques are annexed hereto and marked as **Annexure- "G"**.

06. That the petitioner undertakes that none of the cheques will face dishonor or unpaid. He will also submit regular compliances before this Hon'ble Court. If anything contrary happens, the petitioner undertakes to abide by any Order or Direction of this Hon'ble Court.
07. That the petitioner craves leave of the Hon'ble Court to swear affidavit with photocopy of the annexures, original copy of the Annexure- F is lying with the petitioner and the original copies of Annexure- G will be sent to the complainant. The petitioner undertakes that the photocopies annexures are to reflection of the original copy and he shall be bound to produce the original on demand of this Hon'ble Court.

08. That this supplementary affidavit may kindly be treated as part of the original Petition.
09. That the statements of facts made in this petition are true to my knowledge and matters of record, which I verily believe to be true and the rests are submissions before this Hon'ble Court.

Prepared in my office.

(Dr. Syeda Nasrin)

Advocate

Solemnly affirmed before me by
said deponent at the Supreme
Court premises, Dhaka on
this theth day of, 2020
at A.M./P.M.

DEPONENT

The deponent is known to me
and identified by me.

(Dr. Syeda Nasrin)

Advocate

Membership # 6731

Hall Room No.2, Supreme
Court Bar Association Building
Mobile : 01717041929

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**
